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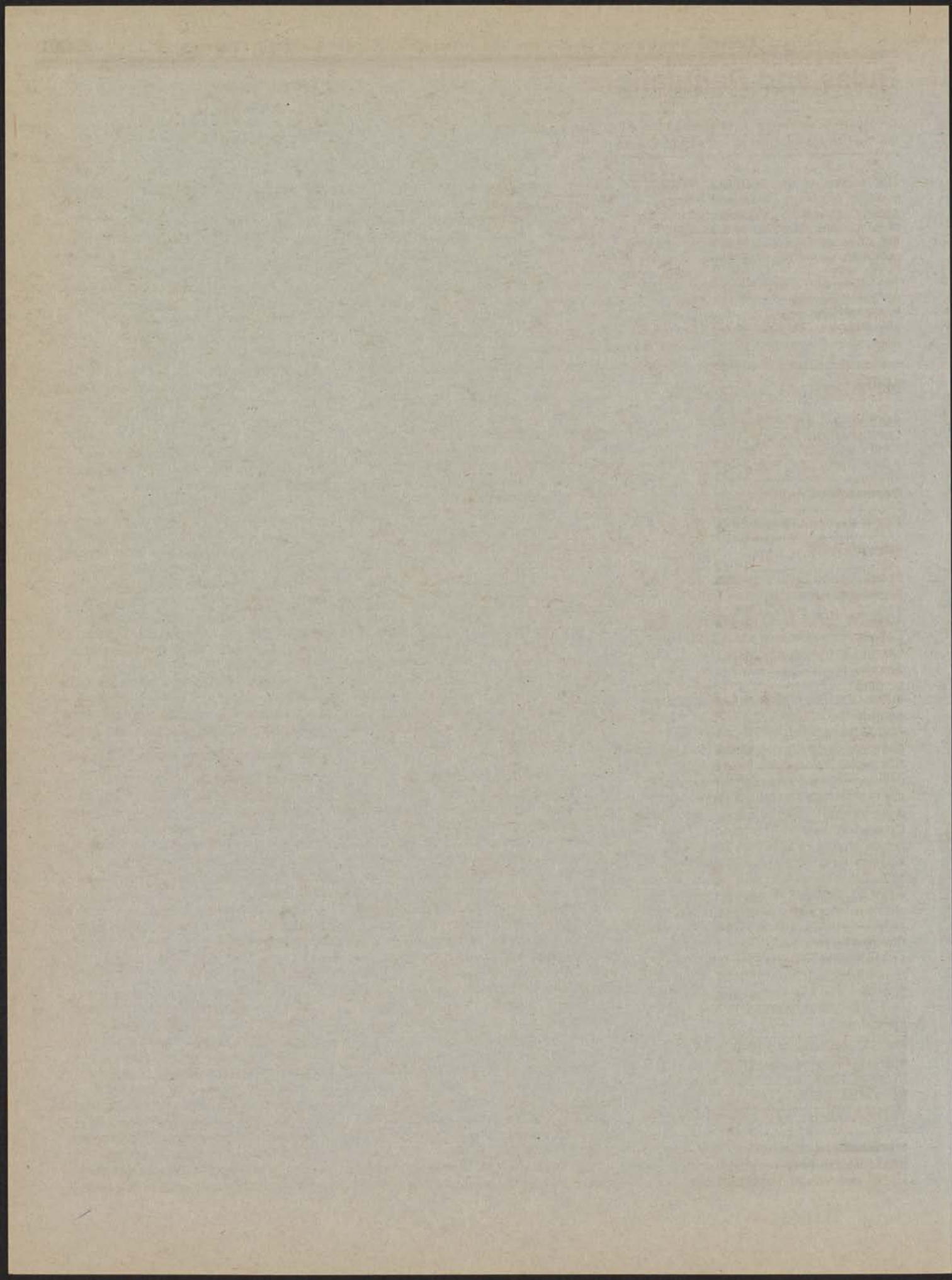
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 718, 719, and 720

Commodity Credit Corporation

7 CFR Parts 1413 and 1414

RIN 0560-AC90

Food, Agriculture, Conservation, and Trade Act Amendments of 1991

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The statutory basis for the regulations set forth at 7 CFR parts 718, 719, 1413, and 1414, which relate to compliance, reconstitutions, feed grains, rice, upland and extra long staple cotton, wheat, integrated farm management, and related programs, were amended by the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (the 1991 Act), which was enacted on December 13, 1991. An interim rule was published on April 20, 1992 (57 FR 14456) to set forth changes necessary to implement these provisions. Accordingly, this rule adopts the interim rule as final, and sets forth amendments to parts 719, 720, and 1413 to conform to the provisions of the 1991 Act; and to make technical corrections, and to delete references to obsolete provisions.

EFFECTIVE DATE: August 4, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce D. Hiatt, Agricultural Program Specialist, ASCS, P.O. Box 2415, Washington, DC 20013-2415, (202) 690-2798.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing

Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "nonmajor". It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Final Regulatory Impact Analyses were prepared with respect to the programs for the 1992 crops of wheat, feed grains, cotton, and rice. Copies of the analyses are available to the public from Deputy Administrator for Policy Analysis, Agricultural Stabilization and Conservation Service, USDA, room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are Cotton Production Stabilization-10.052; Feed Grain Production Stabilization-10.055; Wheat Production Stabilization-10.058; and Rice Production Program-10.065.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12778.

The provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies at 7 CFR part 780 must be exhausted.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560-0004 and 0560-0092.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0004 and 0560-0092), Washington, DC 20503.

Discussion of Comments and Changes

In response to the interim rule published at 57 FR 14456 on April 20, 1992, 8 letters containing 14 comments were received. The respondents included the National Cotton Council, a Congressman, one commodity organization, bank trust officers, and farm managers.

The discussion that follows is organized in the same sequence as the provisions of the final rule.

Section 718.42 Skip Rows and Strip Crops

One comment was received on this section of the interim rule. The respondent suggested that the regulations which apply to the determination of whether rows of a certain width would be considered planted or skipped should be adjusted in accordance with the clear intent of Congress until such time as corrective legislation can be introduced, passed, and signed. The commentator did not provide additional clarification with

regard to an interpretation of the clear intent of Congress on this issue.

The interim rule which was published on April 20, 1992, provided in 7 CFR 718.42 that for skip rows and row crops the entire acreage of a field shall be considered devoted to the crops where the crop is planted in strips of two or more rows and the strips of idle land are less than 64 inches wide, except where cotton is planted in skip row patterns; (i) if the distance between the rows is 30 inches and the strips of idle land are less than 60 inches wide; or (ii) if the distance between the rows is 32 inches and the strips of idle land are at least 60 inches but less than 64 inches, the producer has the option to consider the crop as either solid planted or skip row.

Based upon a complete review of the legislative history on this issue, it is believed that the interim rule does conform with the intent of Congress. Accordingly, § 718.42 is adopted without change.

Section 719.2 Definitions

This part of the interim rule discussed an issued that had been raised concerning the treatment of spouses who reside in community property States or who jointly own property. The definition of owner was clarified to provide that each such spouse is considered an owner in his or her own right. In addition, the interim rule provided that one spouse could sign on behalf of the other spouse without the need for a signed power-of-attorney document. In the event a spouse did not desire to allow the other spouse to take such action, the interim rule provided that notification must be given to ASCS and CCC that a spouse cannot execute documents on behalf of the other spouse. The purposes of this provision are to simplify the administration of programs by ASCS and CCC, to establish a uniform treatment of spouses with respect to signature requirements throughout the nation without regard to State law, and to reduce the paperwork burden on producers.

Five comments were received on this section of the interim rule, all from the State of Illinois. The respondents, who were bank trust officers and farm managers, stated that they thought the definition of "producer" should be broadened to include agents of trustees and executors, since ASCS procedure prohibits trustees and executors from delegating discretionary authority to an agent unless authorized by State law.

ASCS has determined not to change the definition of "producer" as changing the definition would have a significant impact on payment limitation determinations and other program

matters, however, to simplify program administration and reduce the paperwork burden for producers, we do agree that trustees and executors should be permitted to delegate their authority to execute documents necessary for enrollment in ASCS and CCC programs.

After reviewing the issue, it has been determined that the reference to signatures for married producers should be removed from 7 CFR part 719, and that 7 CFR part 720 should be revised to clearly specify that this provision applies to all ASCS-administered programs, including CCC programs. Accordingly, the amendment to the definition of "producer" in § 719.2 is reissued as it existed prior to the issuance of the interim rule and a new § 720.2 is added to incorporate the signature requirements for individuals (including spouses), trusts, estates, and business entities who enroll in ASCS-administered programs, including CCC programs.

Section 1413.6 Farm Program Payment Yields

One comment was received on this section of the interim rule. The respondent opposed the proposal to determine farm program payment yields using the farm's irrigated history in 1988 through 1990. The respondent stated that the producers in the West who must irrigate to grow crops could find themselves with low yields because their crop rotations did not include growing program crops in those 3 years.

The regulations provide for an appeal procedure that is intended to provide some flexibility in addressing cases that do not fit the provisions of the basic rule in which the producer believes that they have been unjustly affected. The appeal procedure that is in place will cover cases where a producer has a rotation practice of planting both program and nonprogram irrigated crops. It should be noted, however, that we do not believe that it was the intent of the managers of Food, Agriculture, Conservation and Trade Act of 1990 to use historical weighted yields that would exceed the levels of payment that could, or would have been, made available before 1991. Accordingly, § 1413.6 is adopted without change.

Section 1413.61 Eligible Land

Two comments were received on this section of the interim rule. The commentators strongly opposed the elimination of provisions providing the exceptions to minimum size and width requirements for land designated as ACR. It was suggested that the exceptions be reinstated, particularly for operations where irregular skips have

been utilized in conservation compliance plans. The final rule published April 19, 1991, provided these exceptions for the 1991 crop year only, because of the lateness of the publication. The purpose of the 1991 change was to ensure the uniform application of acreage reduction requirements to all producers. Accordingly, § 1413.61 is adopted without change.

Section 1413.63 Approved Cover Crops and Practices

One comment was received on this section of the interim rule. The respondent urged the inclusion of the provisions of this section in the final rule as written. Accordingly, § 1413.63 is adopted without change.

Section 1413.72 Skip Rows

This section of the interim rule received one comment. The commentator urged the inclusion of the provisions of this section in the final rule as written. Accordingly, § 1413.72 is adopted without change.

Section 1413.79 Eligible CU for Payment Land

One comment was received on this section of the interim rule. The commentator opposed the provisions as unnecessarily restrictive and urged consideration be given to allowing an exception when the operation is utilizing irregular or narrow skips as part of an approved conservation plan. The commentator stated that these provisions would place a hardship on smaller farmers. The final rule published April 19, 1991, provided the exceptions to the minimum size and width for the 1991 crop year only, because of the lateness of the publication of the rule. As noted with respect to the similar provision at § 1413.61, it was the intent of the 1991 rule to insure uniform compliance by all producers with acreage reduction program requirements. Accordingly, this comment is not adopted, and § 1413.79 is adopted as written.

Section 1413.111 Division of Payments

This section of the interim rule receives two comments. One respondent opposed the proposed method for determining whether a lease providing for a combination payment of cash and/or a share of the crop will be considered a cash or share lease. The commentator also opposed the provision stating that if a cash lease landlord receives any part of the deficiency payments or loan is received on any production that belongs to the landlord it shall be considered a scheme or device. The respondent felt

that this reference to scheme and device is arbitrary, capricious, and without justification and should be withdrawn. The other respondent also opposed the statement referring to scheme and device. The respondent considered the term scheme and device a chilling term to use for program violations. The respondent also suggested that the provisions for combination leases departed from the rule previously in effect, that it is dependent on whether the cash lease payment is equal to or exceeds the normal cash lease established by the county committee, and also stated that the provision was published in the interim rule after most leases have been negotiated for the year. It was stated by the respondent that this is an inappropriate statement for long term leases that have been unchanged for the 1992 crop. The provisions for cash lease and share lease were published in the interim rule in order to ensure that creative financial arrangements were not used in order to circumvent statutory program limitation provisions. These changes were based upon prior year experiences and to not implement these changes in 1992 would allow producers to continue to avoid these statutory provisions. However, the provisions for combination leases and loan eligibility has been revised for clarification.

List of Subjects

7 CFR Part 719

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements.

7 CFR Part 720

Acreage Allotments, Marketing quotas.

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, the interim rule amending 7 CFR parts 718, 719, 1413, and 1414, published at 57 FR 14456 on April 20, 1992, is adopted as a final rule with the following changes:

PART 719—RECONSTITUTION OF FARMS, ALLOTMENTS, NORMAL CROP ACREAGE AND PRECEDING YEAR PLANTED ACREAGE

1. The authority citation for part 719 continues to read as follows:

Authority: 7 U.S.C. 1375, 1378, 1379, 1461-1469 and 1801 note.

2. Section 719.2 is amended by revising the definition of "producer" to read as follows:

§ 719.2 Definitions.

Producer means a person who, as owner, landlord, tenant, or sharecropper, is entitled to share in the crops available for marketing from the farm or in the proceeds thereof.

PART 720—GENERAL POLICY AND INTERPRETATIONS

3. The authority citation for part 720 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714b and 714c.

4. Section 720.2 is added to read as follows:

§ 720.2 Signature requirements.

(a) The provisions of this section shall be effective on or after August 4, 1992. Such provisions apply to all Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC) programs administered by county ASCS offices and to related activities except as provided in paragraph (b) of this section.

(b) The provisions of paragraph (c) of this section are not applicable to:

- (1) Program documents required to be executed in accordance with part 3 of this title and part 704 of this chapter;
- (2) Easements entered into under the Wetlands Reserve and Conservation Reserve Programs;
- (3) Form ASCS-211, Power of Attorney, and Form ASCS-211-1, Power of Attorney for Husband and Wife; and
- (4) Such other program documents as determined by ASCS or CCC.

(c) When an ASCS or CCC program requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such ASCS or CCC documents on behalf of the other spouse, unless such other spouse has provided written notification to ASCS and CCC that such action is not authorized. If such restriction relates to activities for a specific farm, the notification must be provided to the county ASCS office which administers ASCS and CCC programs with respect to such farm.

(d) An individual; duly authorized officer or director of a corporation; duly authorized partner of a partnership; executor or administrator of an estate; trustee of a trust; guardian; and conservator may delegate to another the authority to act on their behalf with respect to ASCS and CCC programs administered by county ASCS offices by

execution of Form ASCS-211, Power of Attorney. ASCS and CCC may, at their discretion, allow the delegations of authority by other individuals through use of such a form or such other form as approved by ASCS or CCC.

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

5. The authority citation for part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441-2, 1444-2, 1444f, 1445b-3a, 1461-1469, 15 U.S.C. 714b and 714c.

6. Section 1413.111 is amended by revising paragraphs (b)(2) (iv) and (v) to read as follows:

§ 1413.111 Division of payments.

(b)(1) * * *

(2) * * *

(iv) If a lease provides for both a cash payment and/or a share of the crop or production the county committee will determine a normal cash lease amount by crop for the area. If the guaranteed production or cash lease payment is equal to or exceeds the normal cash lease established by the county committee for the area, then the lease shall be considered to be a cash lease.

(v) If the lease is determined to be a cash lease, the landlord is not eligible to receive disaster or deficiency payments in accordance with this part on such part of the crop.

Signed at Washington, DC, on July 29, 1992.

Keith D. Bjerke,
Administrator, Agricultural Stabilization and Conservation Service, Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 92-18372 Filed 8-3-92; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket No. FV-91-430FR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Change in the Undershipment Carryover Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the undershipment carryover provisions of

the California-Arizona navel and Valencia orange marketing orders. This rule reduces from two weeks to one week the length of time that handlers may carryover undershipments of allotment when volume regulation is in effect. This action was recommended by the Navel and Valencia Orange Administrative Committees (Committees) at a joint meeting on August 27, 1991. The Committees locally administer the marketing orders covering navel and Valencia oranges grown in Arizona and designated parts of California.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT:

Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2522-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges, respectively, grown in Arizona and designated parts of California, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in

which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges who are subject to regulation under the respective marketing orders and approximately 4,000 producers of navel oranges and 3,500 producers of Valencia oranges in the regulated areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of producers and handlers of California-Arizona navel and Valencia oranges may be classified as small entities.

This final rule changes the undershipment carryover provisions of the California-Arizona navel and Valencia orange marketing orders. This action reduces from two weeks to one week the length of time that handlers may carryover undershipments of allotment when volume regulation is in effect. This action was recommended by the Navel and Valencia Orange Administrative Committees at a joint meeting on August 27, 1991, by an eight to one vote of the Navel Orange Administrative Committee (NOAC) and a unanimous vote of the Valencia Orange Administrative Committee (VOAC).

Sections 907.52 and 908.52 of the California-Arizona navel and Valencia orange marketing orders, respectively, provide for weekly volume regulations for fresh oranges going to the fresh domestic market (the United States and Canada). Volume regulations may be implemented during a season as needed to help maintain orderly marketing

conditions, avoid unreasonable fluctuations in supplies and prices, and ultimately improve returns to producers.

When the Committees believe that volume regulation may be needed during a season, they make such recommendations to the Department for review. The Department evaluates such recommendations in conjunction with information concerning crop, weather, and transportation conditions, as well as information contained in Market News reports, handler bulletins, and other pertinent publications. The Department carefully considers all such information and, if warranted, issues a volume regulation for a specified week. When volume regulation is in effect for a given week, the Committees calculate the quantity of oranges (allotment) which may be handled by each handler.

Sections 907.56 and 908.56 of the navel and Valencia orange orders, respectively, provide that if any person handles a quantity of oranges less than their allotment for a week when volume regulation is in effect, such person may handle, in addition to such person's allotment for the next two succeeding weeks only, a quantity of oranges equivalent to such undershipment. Those sections also provide authority for the Committees to recommend to the Secretary increases or decreases in the number of weeks that undershipments of allotment may be carried forward.

The Committees recommended decreasing the length of time that handlers may carry forward undershipments of allotment from two weeks to one week. The two-week carryover provisions were added to the orders in 1985 to provide handlers additional flexibility. However, the Committees have found that carrying forward undershipments for a period of two weeks makes it difficult to accurately determine overall industry shipment levels based on a given allotment level. For any given week when volume regulation is in effect, the Committees cannot be sure if the undershipments from the prior week will be utilized during the current week or the following week. This may result in conservative recommendations for volume regulations by the Committees, which could result in shorting the market of needed supplies.

The uncertainty with respect to when undershipments will be utilized may also affect the loan provisions of the orders. Under the orders, handlers may borrow allotment from other handlers who choose to ship less than their allotment or who cannot fully utilize their allotment. Handlers may be less

likely to offer allotment for loan in anticipation that they can utilize such allotment during the following two weeks. This uncertainty can result in handlers offering allotment for loan too late during a week, thereby causing an unnecessary loss in shipping opportunity. Finally, the two-week carryover provision also creates uncertainty among buyers, as they may not have an accurate picture of available supplies.

The Committees believe that this action will help them make better estimates of shipment levels and available supplies during periods of volume regulation. Thus, the Committees should be able to make recommendations for volume regulation based on improved information, thereby more effectively carrying out the intent of the orders and meeting the objectives of the Act. This action should also improve the loan functions of the orders by giving handlers a better estimate of shipping levels during a week of regulation. Handlers will then be able to make more timely decisions concerning allotment loans and avoid losses of shipping opportunity.

A proposed rule concerning this action was published in the December 13, 1991, issue of the *Federal Register* (56 FR 65023). Comments concerning this action were invited until January 13, 1992. Nine comments were received, four in support of the proposal and five against. The four supporting comments were submitted by the VOAC, Sunkist Growers, Inc. (Sunkist), Suntreat Growers & Shippers, Inc., and G.A. Wollenman. The five opposing comments were submitted by Farmers Alliance for Improved Regulation (FAIR), Dole Citrus (Dole), Rainbow Valley Orchards (Rainbow), Lemon Twist Ranch, and Sequoia Orange Company, Inc. (Sequoia).

The four commenters supporting this action all mentioned that they believe that the two week carryover period has allowed for distortions in calculating what is actually available to be shipped to the marketplace. In its comment, the VOAC reaffirmed its belief that without the knowledge of whether carryover of allotments would be shipped in the current week or in the following week, the Committees have tended to be conservative in their recommendations for volume regulation. The VOAC also expressed concerns that prorate violations may occur due to the confusion surrounding the current situation.

In his comment, G.A. Wollenman stated that the two week undershipment carryover provisions have proven to be a liability. He believes that these

provisions result in the lack of availability of the actual amount of undershipments to be utilized in a given week, making it difficult for the Committees to be exact in their recommendations for weekly volume regulation.

The comment from Sunkist states that Sunkist approved of the current carryover provisions. However, after five years, it has found these provisions have not added flexibility, but have caused the Committees to be more cautious when recommending weekly levels of volume regulation. Because of the uncertainty of not knowing in which week the undershipments might be utilized, the Committees have been reluctant to set maximum levels of allotment. Sunkist believes that the orders' loan provisions have also been affected by the current carryover provisions, and that a one week carryover will allow the loan provisions to be used in a more effective and efficient manner.

The remaining commenters raised several issues opposing changing the undershipment carryover provisions from two weeks to one. Many of the comments are similar and will be discussed together. Each issue raised is addressed herein.

Several commenters who opposed the proposal contended that it would adversely affect growers and would result in a loss of flexibility. In their comments, both Sequoia and Rainbow expressed dissatisfaction with the prorate system. Sequoia stated that it is unlawful, and Rainbow commented that it would like to see it abolished. In lieu of the end of prorate, both stated that the existing system should be as flexible as possible, and that reducing the carryover time for undershipments would result in a loss of flexibility. Sequoia commented that if a change was to be made, it would like to see the carryover time increased.

Dole also believes that a reduction in carryover time would result in a loss of flexibility. In its comment, Dole stated that reducing carryover time to one week would leave growers more vulnerable to short-term changes in market conditions. Dole believes that if circumstances exist where growers are having difficulty picking fruit or prices are depressed, providing growers the flexibility to hold their fruit on the tree for another two weeks could result in growers getting a better price for that fruit.

In the comment received from Lemon Twist Ranch, the commenter expresses that prorate restrictions are already too burdensome, and to remove the two week carryover provision would result

in even more interference in the industry.

In response to these concerns, the original intent of establishing the two week carryover provision was to provide the industry with additional flexibility. However, the Committees have found that the additional week for allowable undershipments has inherent problems. The two carryover period has made it difficult for the Committees to accurately estimate the level of undershipments to be utilized in a given week. Consequently, the accuracy of the Committees' recommendations has been adversely affected.

By reducing the carryover time to one week, the Committees will be able to more reliably estimate the carryover available each week. This will enable the Committees to adjust their recommendations for volume regulation to better reflect the marketing situation for the given week, creating a more stable market and improved grower revenues. The ability to make better recommendations will also allow the Committees to be more responsive to market and weather changes.

While this rule may result in somewhat less flexibility for some handlers individually, it will provide a benefit to the industry as a whole. The Committees believe that under the two week carryover provisions, they tended to make conservative recommendations for volume regulations, reducing the amount of allotment available to handlers. By allowing the Committees to make recommendations based on more reliable information, they may increase their levels of recommended allotments, giving handlers greater flexibility to market more fruit each week.

Additional flexibility could also be provided under the one week carryover period by the possible increased availability of allotment loans. The current undershipment provisions may cause uncertainty as to whether it would be better for a handler to hold any extra allotment to utilize it sometime in the two week carryover period or to offer it for loan. Consequently, indecision may cause handlers to offer allotment for loan too late in the regulatory week, resulting in a loss of shipping opportunity. The gains in efficiency of operation resulting from the increased certainty above available supplies and the willingness of handlers to offer allotment for loan are expected to more than offset any reduction in flexibility for handlers as compared with a two-week undershipment carryover period.

In response to Sequoia's comment that the carryover period should be increased, an increase would only serve

to exacerbate the problems which exist under the two week carryover period.

In the comment received from FAIR, the commenter claims that the burden of this change would fall primarily on small handlers who have come to depend on the added flexibility provided by the two week carryover. The commenter further states that allotments issued since 1985 are much higher than levels recommended during the five years preceding the change, and that grower revenue has been higher since the two week carryover was implemented.

FAIR's comments are highly speculative. There are many factors to consider besides the change in the carryover provisions when evaluating such historical information. One must consider the market conditions, weather, and many other factors which differentiate the individual seasons and impact shipment and price levels. As far as the claim that small handlers will be inequitably impacted by the change to a one week carryover period, the Department believes that all handlers will benefit from the advantages provided by this rule as mentioned above.

FAIR also commented that California-Arizona Valencia oranges have not been regulated for the past five years, and to make assumptions about the effects of a carryover change on the industry are highly speculative. However, should volume regulation be implemented for California-Arizona Valencia oranges in the future, the VOAC would also benefit from the better information available under a one week carryover period as mentioned above. This change will result in gains in efficiency of operations under the orders, and will affect both orders similarly.

Therefore, for the reasons stated, the above comments in opposition to the proposed rule, as well as the alternatives presented, are denied.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committees' recommendations, the comments received, and other available information, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 907 and Part 908

Marketing agreements, Oranges, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 as amended as follows:

1. The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.118 is added to read as follows:

§ 907.118 Undershipments.

If any person handles during any week a quantity of oranges, covered by a regulation issued pursuant to § 907.52, in an amount less than such person's allotment of oranges for such a week, such person may handle, in addition to such person's allotment for the next week only, a quantity of such oranges equivalent to such undershipment.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 908.118 is added to read as follows:

§ 908.118 Undershipments.

If any person handles during any week a quantity of oranges, covered by a regulation issued pursuant to § 908.52, in an amount less than such person's allotment of oranges for such a week, such person may handle, in addition to such person's allotment for the next week only, a quantity of such oranges equivalent to such undershipment.

Dated: July 30, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-18373 Filed 8-3-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

7 CFR Part 989

[Docket No. FV-92-0561FR]

Raisins Produced From Grapes Grown in California

Monitoring of Raisins Produced From Grapes Grown Outside the State of California and Received by Handlers Inside the State; Continuation of Existing Monitoring System Which Expired July 31, 1992

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule continues indefinitely a surveillance system for monitoring raisins produced from grapes grown outside the State of California and received by handlers inside the state. The requirements to be continued without change are specified in § 989.157 and 989.173. This action was unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the marketing order. The monitoring system will provide information to help ensure that all non-California raisins are properly identified and are not being included in any programs implemented under the marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: August 1, 1992. Comments which are received by September 3, 1992 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2020.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This

interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(a) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of producers and a minority of handlers of California raisins may be classified as small entities.

The raisin production area in the United States has historically been limited to the central San Joaquin Valley of California. In recent years, limited tonnage of raisins has also been produced from grapes grown in Southern California. All such raisins are currently regulated under the Federal raisin marketing order, which covers raisins

produced from grapes grown within the production area of the State of California.

In 1989, the Committee learned that some California raisin handlers were receiving raisins produced from grapes grown in Arizona and Mexico. Since these raisins were produced outside of California, they were not regulated under the order. The Committee was concerned that such non-California raisins could be utilized in programs established under the marketing order for California raisins.

As a result, a temporary system, which expired on July 31, 1992, was established during the 1990-91 and 1991-92 crop years (August 1 through July 31) to monitor raisins produced from grapes grown outside the State of California and received by handlers within the state (55 FR 28019, July 9, 1990; 7 CFR 989.157 and 989.173). All non-California raisins received by handlers over the last two crop years were required to be identified, stored separately, reported to the Committee, and kept under surveillance until such raisins were disposed of by the handlers.

The data collected since the inception of the program indicates that 2,082 tons of non-California raisins were received by California raisin handlers during the 1990-91 crop year. Data for the yet to be completed 1991-92 crop year shows that 1,790 tons of non-California raisins were handled inside the state through February 1992. The movement of non-California raisins into the production area is expected to continue. While the tonnage listed above comprises less than one percent of the total annual California raisin production, the Committee feels that the temporary monitoring rule has provided the necessary means to ensure that non-California raisins are properly identified and are not being included in marketing order programs and that the system should be continued without interruption to prevent program abuses.

An Export Replacement Incentive Program is authorized under the order to promote the sale of California raisins in export markets. Under this program, handlers who ship free tonnage California raisins to approved foreign countries may receive prescribed amounts of reserve pool California raisins at a reduced price. Free tonnage raisins are raisins which may be shipped immediately to any market. Reserve raisins are held by handlers in a reserve pool for the account of the Committee. The Committee is concerned that handlers could ship non-California raisins rather than free tonnage California raisins under this export

program. Only California raisins should be used in such programs established under the order.

This action, as with the temporary system, will require non-California raisins to be observed and marked with a RAC control card by a USDA (Federal) inspector once they are received on handler's premises.

The handler will notify the inspection service in writing at least one business day in advance of the time such handler plans to begin receiving non-California raisins, unless a shorter time period is acceptable to the inspection service. Handlers will not be permitted to unload non-California raisins unless a federal inspector is present to observe the unloading. If an inspector is not available, the raisins may be unloaded if the handler has a written statement from the inspection service that an inspector will not be available at that time. When an inspector becomes available at a later time, such raisins will be properly marked and identified. Handlers will continue to be required to store these marked non-California raisins separate and apart from California raisins. Storage of such raisins will be deemed "separate and apart" if the containers are properly marked as non-California raisins and placed so as to be readily and clearly identified. The inspection service will observe the processing and disposition of such non-California raisins. Non-California raisins will not be required to meet outgoing inspection standards established under the order for California raisins. In addition, handlers receiving non-California raisins will be required to pay the fees assessed by the inspection service to identify and maintain surveillance of such raisins. Fees are charged by the inspection service (7 CFR 52.42).

Authority for continuing this identification and surveillance system is provided in § 989.36(l) of the order. That section, which describes the Committee's specific duties, gives the Committee authority to establish, with the approval of the Secretary, rules and regulations necessary to administer its duties, as well as the provisions of the California raisin order.

The reporting by this action will require California raisin handlers to continue to file two existing reports with the Committee. The first report requires handlers to report the receipt of non-California raisins and will be filed by handlers on a monthly basis. This report helps the Committee determine the extent to which non-California raisins are being received by handlers, and contains the following information: (1)

The varietal type(s) of non-California raisins received; (2) the net weight (pounds) of such raisins categorized as natural condition or packed for the current month as well as a cumulative quantity from the previous August 1; and (3) the state or country where such raisins were produced. With each report, handlers are required to submit a copy of the door receipt, weight certificate, or such other document as required by the Committee that includes, but is not limited to, the name of the tenderer (equity holder) from whom such raisins were received, the varietal types of raisins, the net fruit weight, the number and type of containers in the lot, the date of delivery, and the address including state or country where such raisins were produced.

The second report indicates the disposition of non-California raisins and is filed by the handler with the Committee on or before the eighth day of each month. This report helps the Committee monitor the disposition of non-California raisins. This report contains similar information to that which is currently submitted on California raisin shipment reports: (1) The varietal type(s) of non-California raisins shipped; (2) the net weight (pounds) of such raisins shipped; (3) the destination (domestic, export, and other disposition such as distilleries, livestock feeders, or concentrate) of such shipments; and (4) the types of raisin packages (carton, bag, or bulk) shipped.

The monitoring system published in the July 9, 1990 Federal Register was effective for the 1990-91 and 1991-92 seasons. This action continues indefinitely that system unchanged.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection requirements that are being continued by this action have been approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0581-0083.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective

date of this action until 30 days after publication in the Federal Register because: (1) This action is a continuation of a temporary rule in effect since August 8, 1990; (2) this action was recommended at a public meeting; (3) it is desirable to have this action in place for the beginning of the 1992-93 crop year, August 1, 1992 (the temporary system expired on July 31, 1992); and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

2. For the reasons set forth above and under the authority of 7 U.S.C. 601-674, the regulations that appear in 7 CFR part 989, §§ 989.157 and 989.173 published on July 9, 1990 at 55 FR 28019, are continued in effect unchanged.

Dated: July 30, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 92-18375 Filed 8-3-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-89; Special Conditions No. 25-ANM-61]

Special Conditions; Canadair CL-600-2B19, Regional Jet Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Canadair CL-600-2B19, Regional Jet airplane. This airplane will have novel or unusual design features associated with a number of high technology avionics systems including cathode ray tube engine and flight information displays, digital engine control and electronically controlled braking. The applicable regulations do

not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT:

Hank Jenkins, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2141.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1988, Transport Canada, on behalf of Canadair, applied for an amendment to Canadair's Type Certificate No. A21EA to include their new Model CL-600-2B19 Regional Jet for an increase in size and the addition of a Collins integrated avionics suite in their Model CL-600-2B19. The Model CL-600-2B19, which is a derivative of the Model CL-600-2B16 currently approved under Type Certificate No. A21EA, is a Regional Jet with a length of 88 ft. 5 inches, a wingspan of 70 ft. 4 inches, a passenger capacity of 50, a maximum takeoff weight of 51,000 lbs., and a range of 1400 nautical miles with two General Electric CF-34-3A1 engines. The Collins integrated avionics suite (essentially Proline IV) on the airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an Electronic Flight Instrument System (EFIS), engine and flight information displays, digital engine control and electronically controlled braking, which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Canadair must show that the Model CL-600-2B19 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A21EA or the applicable regulations in effect on the date of application for the change to the Model CL-600-2B16. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis". The regulations incorporated by

reference in Type Certificate No. A21EA are as follows: Part 25 of the FAR dated February 1, 1965, including Amendments 25-1 through 25-37. The certification basis also includes certain later amended sections of part 25 and special conditions that are not relevant to these special conditions.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Model CL-600-2B19 must also be shown to comply with the following:

The Collins integrated avionics suite installation for the Regional Jet would be required to comply with part 25, as amended by Amendment 25-1 through Amendment 25-62, except for §§ 25.832 and 25.1438; § 25.109, as amended by Amendment 25-41; § 25.773(b)(2) as amended by Amendment 25-72; and § 25.1401 as amended by Amendment 25-40. In addition, part 34 of the FAR, in effect at the time of awarding the type certificate, and part 36 of the FAR, in effect on the date the noise tests are performed, must be met. These special conditions form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model CL-600-2B19 with Collins integrated avionics suite, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established by the regulations. (In this context, "novel or unusual design feature" means novel or unusual with respect to the applicable standards of part 25. Such features may or may not be unusual as far as industry "state-of-the-art" is concerned.)

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

In addition to the applicable airworthiness regulations and special conditions, the Model CL-600-2B19 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology

avionic systems. There are two regulations that specifically pertain to lightning protection: One for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements of electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are herewith issued for the Model CL-600-2B19 Collins integrated avionics suite which would require that new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), engine and flight information displays, digital engine control, and electronically controlled braking, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, a clarification on the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its

systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. First Return Stroke (Severe Strike—Component A, or Restrike—Component D).

This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. Multiple Stroke Flash (1/2 Component D).

A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of 1/2 magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. Multiple Burst (Component H).

In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data

gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up to 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 microseconds, the maximum is 50 microseconds. The 24 bursts are distributed over a period of up to 2 seconds according to the following

constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (1/2 Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_0 (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (1/2 component D)	Multiple burst (component H)
I_0 , amp	218,810	109,405	54,703	10,572
a , sec ⁻¹	11,354	22,708	22,708	187,191
b , sec ⁻¹	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak}	200 KA	100 KA	50 KA	10 KA
and, $(di/dt)_{max}$ (amp/sec)	1.4×10^{11} @ $t=0+sec$	1.4×10^{11} @ $t=0+sec$	0.7×10^{11} @ $t=0+sec$	2.0×10^{11} @ $t=0+sec$
di/dt , (amp/sec)	1.0×10^{11} @ $t=.5\mu s$	1.0×10^{11} @ $t=.25\mu s$	0.5×10^{11} @ $t=.25\mu s$	0.5×10^{11} @ $t=.25\mu s$
Action Integral (amp ² sec)	2.0×10^6	0.25×10^6	0.625×10^6	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. Minimum threat of 100 volts per meter peak electric field strength from 10KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated

wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10KHz-500KHz	60	60
500KHz-2MHz	80	80
2MHz-30MHz	200	200
30MHz-100MHz	33	33
100MHz-200MHz	150	33
200MHz-400MHz	56	33
400MHz-1GHz	4,020	935
1GHz-2GHz	7,850	1,750
2GHz-4GHz	6,000	1,150
4GHz-6GHz	6,800	310
6GHz-8GHz	3,600	666
8GHz-12GHz	5,100	1,270
12GHz-20GHz	3,500	551
20GHz-40GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based

on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-92-3-NM was published in the Federal Register on April 15, 1992 (57 FR 13058), for public comment. The following discussion summarizes the comments received and the FAA response to the comments.

Canadair (the manufacturer of the Regional Jet) does not agree that the term "novel and unique" as used in these special conditions, applies to avionics/electrical systems such as electronic flight instrument systems (EFIS), engine information displays, digital engine controls, and electronically controlled braking. Canadair points out that such systems have been in use for a number of years, and have proven themselves through high intensity radiated fields (HIRF) and lightning equipment qualification tests and satisfactory service history.

FAA Response: Canadair is correct in their position that these systems are mature and represent established technology for the Regional Jet avionics/electrical systems. However, relative to part 25 certification requirements, such avionics systems are still "novel and unique" because rulemaking to incorporate certification requirements lags avionics technology by several years. Even though requirements rulemaking is now in process, in the interim, the Regional Jet avionics/electrical systems must be considered "novel and unique" for purposes of applying special conditions in accordance with § 21.21(b).

Canadair notes that the proposed special conditions do not present a clear definition of which aircraft systems must be tested in the HIRF environment. Canadair proposes several systems in their comment which they believe should be tested to the HIRF requirements.

FAA Response: Canadair is correct. The HIRF special condition is purposely written to define the threat and provide acceptable performance standards leaving it up to the applicant to provide the certifying office, a list of systems to be tested, based on a hazard analysis which shows which systems perform critical functions and require testing. Procedures for such substantiation are given in an FAA Memorandum from AIR-100 to all FAA Directorates dated December 5, 1989. A copy of the memorandum was given to Canadair. The certifying office will review for concurrence, the list of proposed critical systems that must meet the HIRF special condition.

Canadair notes that the HIRF field defined in paragraph 2 of the special condition is less severe than the HIRF envelope defined in FAA Issue Paper SE-4, Radio Frequency (RF) Energy Protection, which is applicable to the Regional Jet. Canadair requests that the issue paper be revised to reflect the content of the special conditions.

FAA Response: Canadair is correct. The HIRF requirements were revised downward since the issue paper (SE-4) was prepared. The FAA will close this issue paper based on the notice of proposed special condition taking precedence.

Conclusion: This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in

the Federal Register; however, as the intended type certification date for the CL-600-2B19 airplane is mid-August 1992, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Canadair Model CL-600-2B19 Regional Jet with Collins integrated avionics suite:

1. **Lightning Protection.** a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. **Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).** Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions

Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions

Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-18403 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 25

[Docket No. NM-60; Special Conditions No. 25-ANM-62]

Special Conditions; Embraer Model CBA-123 Airplane

In the matter of Aft fuselage design structural requirements to prevent propeller strike, Eight-pound bird strike protection for the aft fuselage mounted powerplant structural system and propellers, Propeller blade fire resistance, Propulsion system susceptibility to damage from loss of airplane components and shed ice, and Propeller ground clearance.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer Model CBA-123 airplane in order to establish structural design requirements to prevent propeller blade ground strike, provide eight-pound bird strike protection for the aft fuselage mounted powerplant system, provide propeller blade fire resistance, limit propulsion system susceptibility to damage from loss of airplane components and shed ice, and provide propeller blade ground clearance. Final special conditions have already been issued for this airplane to protect high-technology digital avionics from the effects of lightning and high-intensity radiated fields (HIRF). This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). These special conditions contain additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 25. Further special conditions will be developed at a later date on engine cowl retention.

EFFECTIVE DATE: September 7, 1992.

FOR FURTHER INFORMATION CONTACT: Henry Jenkins, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. SW., Renton, Washington, 98055-4056, telephone (206) 227-2141.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1986, Embraer applied for a Type Certificate for their new Model CBA-123 airplane. This 19 passenger transport category airplane has a unique aft mounted turboprop propulsion system installation with pusher propellers. The propulsion system of the

CBA-123 incorporates two Garrett TPF351-20 turboprop engines and two Hartzell six-bladed propellers. The powerplant nacelles are pylon-mounted on the aft portion of the fuselage.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA-123 meets the applicable requirements of subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; or (2) Compliance with later effective amendments is elected or required under § 21.17; and (3) Special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA-123 would be required to comply with part 25 as amended by Amendment 25-60. However, Embraer has elected to comply with §§ 25.571(e)(2) and 25.905(d) as amended by Amendment 25-72. Part 34 (formerly SFAR 27) and part 36 as amended by the time of awarding the type certificate must also be met.

These special conditions form an additional part of the type certification basis.

Discussion

The existing structural requirements in the FAR do not take into account aft fuselage structural strength requirements needed in the event of a dynamic, hard aft tail strike that could occur during takeoff or landing, to prevent deformation and/or failure and subsequent propeller ground strike for aft mounted turboprop propulsion systems with pusher propellers. Propeller ground strike could in turn cause propeller blades to break off and strike the rudder and elevator control surfaces causing loss of control authority.

Section 25.571(e) requires that the airplane must be capable of successfully completing a flight during which likely structural damage occurs as a result of impact with a 4-lb. bird with the exception of the empennage structure which must withstand an 8-lb. bird strike per § 25.631. For the Model CBA-123, the entire propulsion assembly is in close proximity to the empennage. Failure of the nacelles, pylons, and/or propellers due to bird strike could in turn cause catastrophic failure of the elevator and rudder controls causing loss of pitch and yaw authority. One possible scenario is a birdstrike on a pylon causing it to fail, allowing the engine and rotating propeller to fold back on the empennage and cut it up. Another possible scenario is a birdstrike

on the nacelle causing it to detach, strike the propellers, which in turn detach and strike the empennage and cause loss of control.

The pusher mounted propeller and propeller hub design is susceptible to damage from engine fires. These special conditions ensure that a blade would not be released while the engine is still running, presenting an additional hazard.

The ingestion of foreign objects in flight, other than birds, is not a concern with conventional turbopropeller-powered airplanes because the propellers of such airplanes are not located behind any source of such foreign objects. Although there are sources of such objects located ahead of aft-mounted turbofan engine installations, current requirements of Parts 25 and 33 provide an adequate level of safety. Due to the larger diameter of the Model CBA-123 pusher propeller, it presents a much bigger target for lost components such as service doors, access panels and tire treads, and also for shed ice. Therefore, design precautions need to be taken to minimize the possibility of loss of airplane components and/or shed ice larger than those tested or otherwise accounted for during type certification of the propulsion unit.

In an airplane with conventionally mounted engines, a tail down attitude increases propeller tip ground clearance. In the CBA-123, a tail down attitude decreases ground clearance and special design considerations must be applied to prevent propeller blade strike in a tail down attitude combined with various other adverse conditions that could occur simultaneously and negate propeller ground clearance.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model CBA-123 because of a novel or unusual design feature, special conditions are prescribed under § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Embraer Model CBA-123 will incorporate the following novel or unusual design features:

1. Aft pylon mounted turbopropeller engines. This engine configuration has

not previously been certified in the transport category.

2. Pusher propeller installation. This propeller configuration has not previously been certified in the transport category.

Discussion of Comments

Notice of proposed special conditions No. SC-91-8-NM for the Embraer Model CBA-123 airplane was published in the Federal Register on July 12, 1991 (56 FR 31879). One comment was received. The commenter supports the proposed special conditions. In addition, the commenter raises questions about the type and adequacy of ice protection to be used, i.e., what anti-ice or de-ice methods were incorporated into the design and whether ice protection would include the engine pylons. Although, as the commenter points out, ice protection is outside the scope of the proposed special conditions, the FAA is also sensitive to assuring adequacy of ice protection. In response to the concern expressed and questions raised by the commenter, the following information is provided on the Embraer CBA-123 ice protection systems. The engine pylons and inlets have anti-ice protection provided by bleed air. The wings, vertical stabilizer and horizontal stabilizer have pneumatic inflatable de-ice protection. The propellers have electrically heated anti-ice. It is the intention of Embraer to show compliance with § 25.1419, "Ice Protection," in the Federal Aviation Regulations.

Conclusion: This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983].

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator the following special conditions are issued as part of the type certification basis for the Embraer Model CBA-123 airplane:

1. Aft Fuselage Structural Strength Requirements

a. Embraer must determine whether it is possible for the airplane fuselage aft structure to strike the ground due to maximum possible pitch angles during takeoff and landing. For the landing condition, it must also establish whether it is possible for the aft structure to strike the ground before the main landing gear touches the ground, which would represent a worst case condition.

b. If an aft structure ground strike is possible, worst case structural loads must be established. For landing ground strike loads, a sink rate of 12 feet per second must be assumed.

c. If an aft structural ground strike is possible, adequate structural design and strength must be provided so that worst case loads from an aft structure ground strike will not cause deformation and/or failure such that a propeller ground strike can occur.

2. Eight-pound Bird Strike Protection for the Aft Fuselage Mounted Powerplant System

The nacelle, pylon, and propellers must be designed to assure capability of continued safe flight and landing of the airplane after impact with an 8 lb. bird when the velocity of the airplane (relative to the bird along the airplane's flight path) is equal to V_c at sea level, selected under § 25.335(a).

3. Propeller Blade Fire Resistance

The propeller blades and blade retention system of this pusher-mounted turbopropeller engine must be at least fire resistant or shielded so that they are capable of withstanding the effects of fire until an engine fire can be detected and the engine shut down.

4. Propulsion System Susceptibility to Damage from Loss of Airplane Components and Shed Ice

a. The airplane design must be such that it minimizes the possibility of the loss of components (e.g. access panels, tire treads, and landing gear components) forward of the powerplant installation which are larger and/or heavier than those accounted for during type certification.

b. There must no source of pieces of shed ice located ahead of the engine inlet plane which are larger than those tested or otherwise accounted for during the type certification of the engine and propeller in accordance with the provisions of part 33 and part 35.

5. Propeller Blade Ground Clearance

It must be shown by analysis or test that there will be a positive clearance between each propeller tip and the ground when the airplane:

a. Is loaded to the maximum ramp weight and,

b. Is pitched nose up to the point where the tail skid or aft fuselage is touching the ground and,

c. Is rolled along the lateral axis to the greatest extent expected during takeoff and landing and,

d. The main landing gear tire on the low wing side is fully deflated and,

e. The main landing gear strut on the low wing side is fully compressed and,

f. The propeller on the low wing side is in the most adverse pitch position.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-18405 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 25

[Docket No. NM-73; Special Conditions No. 25-ANM-63]

Special Conditions: Modified Learjet Model 55 Airplane: High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Learjet Model 55 airplane modified by Kal-Aero, Inc., in Kalamazoo, Michigan. This airplane is equipped with high-technology digital avionics systems which perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards which the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is July 28, 1992. Comments must be received on or before September 18, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ATTN: Rules Docket (ANM-7), Docket No. NM-73, 1601 Lind Avenue SW, Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-73. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM-113, Transport Standards Staff, Transport Airplane Directorate Aircraft Certification Service, 1601 Lind

Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-73." The postcard will be date/time stamped, and returned to the commentor.

Background

On March 3, 1992, Kal-Aero Inc., applied for a Supplemental Type Certificate to modify the Learjet Model 55 airplane. The proposed modification incorporates a number of novel or unusual design features, such as digital avionics consisting of a dual electronic flight instrument system (EFIS) which is vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, subpart C of the FAR, Kal-Aero Inc., must show that the altered Learjet Model 55 airplane meets the applicable requirements as specified in § 21.101 (a) and (b); unless (1) Otherwise specified by the Administrator; or (2) Compliance with later effective amendments is elected or required under § 21.101 (a) and (b); and (3) Special conditions are prescribed by the Administrator.

The requirements specified in § 21.101(a) are the regulations incorporated by reference in Type Certificate No. A10CE for the Learjet Model 55 airplanes. Those are: Part 25 effective February 1, 1965, as amended by Amendments 25-2 and 25-4. In

addition: Amendments 25-3, 25-7, 25-10, 25-12, 25-18, 25-21, and 25-30, plus § 25.955(b)(2) of Amendment 25-11; § 25.954 of Amendment 25-14; §§ 25.803(e), 25.811(f), 25-853(a), 25.853(b), and 25-855(a) of Amendment 25-15; § 25.1359 of Amendment 25-17; § 25.785(c) of Amendment 25-20; §§ 25.251(c), 25.251(d), 25.251(e), 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 26.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.093(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303, 25.1307, 25.1331, and 25.1585(c) of Amendment 25-23; §§ 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6) of Amendment 25-36; §§ 25.815, 25.1322, and 25.1403 of Amendment 25-38, and §§ 25.903(e), 25.939, and 25.943 of Amendment 25-40; § 25.255 of Amendment 25-42; § 25.1326 of Amendment 25-43; Part 36 effective December 1, 1969, as amended through Amendment 36-10 when modified according to ECR 1513; Special Federal Aviation Regulation (SFAR) 27 effective February 1, 1974, as amended through Amendment SFAR 27-2; and Special Conditions 25-99-CE-14; Special Conditions 25-ANM-2 dated June 24, 1983, when configured per ECR 2377A or modified per AAK 55-83-4. Compliance with structural provisions of § 25.801 (b) through (e) and 25.807(d) has not been shown.

Ice Protection

Section 25.1419, when ice protection system is installed per ECR 1906. These adopted special conditions are an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 requirements) do not contain adequate or appropriate safety standards for the modified Learjet Model 55 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) to establish a level of safety equivalent to that established by the regulations. (In this context, "novel or unusual design feature" means novel or unusual with respect to the applicable standards of part 25. Such features may or may not be unusual as far as industry "state-of-the-art" is concerned.)

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of

the type certification basis in accordance with § 21.115(a).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that the new technology electrical and electronic systems, such as the Electronic Flight Instrument System (EFIS), be designed and installed to preclude component damage and interruption of function due to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with HIRF protection special conditions is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz-500 KHz.....	60	60
500 KHz- 2 MHz.....	80	80
2 MHz- 30MHz.....	200	200

Frequency	Peak (V/M)	Average (V/M)
30 MHz-100 MHz.....	33	33
100 MHz-200 MHz.....	150	33
200 MHz-400 MHz.....	56	33
400 MHz- 1GHz.....	4,020	935
1 GHz- 2 GHz.....	7,850	1,750
2 GHz- 4 GHz.....	6,000	1,150
4 GHz- 6 GHz.....	6,800	310
6 GHz- 8 GHz.....	3,600	666
8 GHz- 12 GHz.....	5,100	1,270
12 GHz- 18 GHz.....	3,500	551
18 GHz- 40 GHz.....	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

AUTHORITY: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514, and 49 U.S.C. 106(g).

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Learjet Model 55 airplane:

1. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Function whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 28, 1992.

Darrell M. Pederson,

Acting Manager.

Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-18439 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-11-AD; Amendment 39-8310; AD 92-16-01]

Airworthiness Directives; Boeing Model 737-400 and 737-500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-400 and 737-500 series airplanes, that requires inspection of certain side-of-body floor panels, and repair or replacement, if necessary. This amendment is prompted by reports of disbonded one-piece inserts found in certain side-of-body floor panels. The actions specified by this AD are intended to prevent floor panels from breaking away from floor structure during a 9g forward load event.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle,

Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas Rodriguez, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2779; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Boeing Model 737-400 and 737-500 series airplanes was published in the *Federal Register* on March 4, 1992 (57 FR 7679). That action proposed to require inspection of certain side-of-body floor panels, and repair or replacement, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests that the proposed compliance time of 18 months be extended to 36 months. A 36-month compliance time would allow operators to accomplish the requirements of the AD during regularly scheduled maintenance, without disrupting service and avoiding special scheduling for the inspections. The FAA concurs that the compliance time may be extended somewhat. Based on the information available to date, the FAA finds that approximately 40 percent of the panels installed fleetwide could need repair or replacement. Therefore, in light of this data and the lengthy time necessary for repair and replacement, the FAA has determined that the compliance time may be extended to 24 months so that the required actions can be accomplished during regularly scheduled maintenance at a location where special equipment and trained personnel are available. This extension of six additional months will not adversely impact safety. The final rule has been revised accordingly.

Two commenters question the number of work hours that would be needed to accomplish the proposed actions. Although the preamble to the notice indicated that seven work hours would be required, one of the commenters states that that number was

underestimated by approximately ten hours. The FAA agrees that the number of work hours may need some adjustment. The FAA estimated the number of work hours based on the required inspection action only. However, the FAA was recently advised that approximately 40% of the panels currently in service will need to be repaired or replaced. In order to account for the time necessary for repair and replacement on what may be the majority of the affected fleet, the FAA has revised the work hour estimate in the cost impact paragraph, below, to indicate that 17 work hours will be necessary.

One commenter suggests a textual change with regard to the description of the unsafe condition. The commenter requests the inclusion of a more specific definition of the type of load event that could cause the floor panels to break away. The FAA concurs. The description of the unsafe condition has been defined in greater detail to indicate that the requirements of the rule are intended to prevent the panels from breaking away from floor structure during a 9g forward load event.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 231 Boeing Model 737-400 and 737-500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 71 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$66,385. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-01. Boeing: Amendment 39-8310. Docket 92-NM-11-AD.

Applicability: Model 737-400 and 737-500 series airplanes; as listed in Boeing Alert Service Bulletin 737-53A1152, Revision 1, dated October 24, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent floor panels with seats attached from breaking away from floor structure during a 9g forward load event, accomplish the following:

(a) Within 24 months after the effective date of this AD, inspect the side-of-body floor panels forward of Body Station 887 to determine if the panels were manufactured by Hexcel and the date of their manufacture; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin

737-53A1152, Revision 1, dated October 24, 1991.

(1) If the floor panels were not manufactured by Hexcel; or if the floor panels were manufactured by Hexcel on or after January 7, 1991; no further action is necessary.

(2) If the floor panels were manufactured by Hexcel before January 7, 1991, prior to further flight, either replace the floor panels or repair all one-piece inserts in the panels, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection, repair, and replacement shall be done in accordance with Boeing Alert Service Bulletin 737-53A1152, Revision 1, dated October 24, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on July 7, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18334 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-47-AD; Amendment 39-8302; AD 92-15-08]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model Mark 0100 series airplanes, that requires removing the normal maximum (second) detent of the reverse thrust control and installing an improved unit. This amendment is prompted by reports indicating that the override force for the normal maximum detent of the reverse thrust control is too low. This condition, if not corrected, can result in inadvertent selection of too high a thrust reverse level, which could lead to fatigue damage and subsequent reduced structural capability of the horizontal stabilizer attachment.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model Mark 0100 series airplanes was published in the Federal Register on April 23, 1992 (57 FR 14800). That action proposed to require removing the normal maximum (second) detent of the reverse thrust control and installing an improved unit.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Required parts will cost approximately \$230 per airplane. Based on these figures, the total cost impact of the AD on is estimated to be \$13,400, or \$670 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the

criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-15-08, Fokker: Amendment 39-8302.
Docket 92-NM-47-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11308, inclusive; 11310, and 11312 through 11314, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue damage and subsequent reduced structural capability of the horizontal stabilizer attachment, accomplish the following:

(a) Within 7 months after the effective date of this AD, remove the normal maximum (second) detent for the reverse thrust control and install a modified detent, in accordance with Fokker Service Bulletin SBF100-76-008, dated May 8, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and installment shall be done in accordance with Fokker Service Bulletin SBF100-76-008, dated May 8, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on June 29, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18331 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-01-M

14 CFR Part 39

[Docket No. 92-NM-39-AD; Amendment 39-8299; AD 92-15-05]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires removing currently installed engine fire detection wires and replacing them with ones that are fire resistant. This amendment is prompted by the discovery, during a design review, of incorrect insulation installed on the wiring. The actions specified by this AD are intended to prevent wire burnthrough or meltdown that could render the fire detection system ineffective in detecting fire in the engine.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 0100 series airplanes was published in the Federal Register on April 23, 1992 (57 FR 14799). That action proposed to require removing currently installed engine fire detection wires and replacing them with ones that are fire resistant.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The economic impact information, below, has been revised to indicate that the correct number of U.S.-registered airplanes affected by this AD action is 3, rather than 47.

After the careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5.5 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Required parts will cost approximately \$700 per airplane. Based on these figures, the total cost impact of the AD is estimated to be \$3,008. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-15-05, Fokker: Amendment 39-8299.

Docket 92-NM-39-AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11340 through 11348 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire burnthrough or meltdown, that could render the fire detection system ineffective in detecting fire in the engine, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove existing engine fire detection wires and replace them with fire resistant ones, in accordance with Fokker Service Bulletin SBF100-26-004, dated August 23, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and replacement shall be done in accordance with Fokker Service Bulletin SBF100-26-004, dated August 23, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on June 24, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18333 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-54-AD; Amendment 39-8314; AD 92-16-05]

Airworthiness Directives; SAAB-SCANIA Model SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-SCANIA Model SAAB 340B series airplanes, that requires modification of the stabilizer de-icer boot system. This amendment is prompted by recent field experience, which has shown that malfunctioning of the stabilizer de-icer boot system could occur due to freezing of the control valve and the pressure switch located in the dorsal fin. The actions specified by this AD are intended to prevent the accumulation of ice and subsequent reduced controllability of the airplane.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB-SCANIA AB, Product Support, S-581 88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain SAAB-SCANIA Model SAAB 340B series airplanes was published in the Federal Register on April 20, 1992 (57 FR 14368). That action proposed to require modification of the stabilizer de-icer boot system. This amendment is prompted by recent field experience, which has shown that malfunctioning of the stabilizer de-icer boot system could occur due to freezing of the control valve and the pressure switch located in the dorsal fin.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD is estimated to be \$5,280 or \$165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-05. SAAB-SCANIA: Amendment 39-8314. Docket 92-NM-54-AD.

Applicability: Model SAAB 340B series airplanes; serial numbers 240 through 299, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of ice and subsequent reduced controllability of the airplane and stall margins, accomplish the following:

(a) Within 60 days after the effective date of this AD, modify the stabilizer de-icer boot system in accordance with SAAB-SCANIA Service Bulletin 340-30-039, dated December 16, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with SAAB-SCANIA Service Bulletin 340-30-039, dated December 16, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB-SCANIA AB, Product Support, S-581 88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on July 9, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 92-18332 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-05-AD; Amendment 39-8287; AD 92-14-05]

Airworthiness Directives; Aerospatiale Model Nord 262A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Aerospatiale Model Nord 262A series airplanes, that currently requires periodic inspection and treatment of the rudder hinge support tubes. This amendment requires a visual and X-ray inspection of the rudder hinge support assembly for corrosion, and replacement of one or both supports of the rudder hinge support assembly, if necessary. This amendment is prompted by findings of internal corrosion and/or corrosion penetrating through tube walls on in-service airplane rudder hinge support tubes. The actions specified by this AD are intended to prevent corrosion of the rudder hinge support assembly, which could lead to failure of the assembly and subsequent loss of rudder control.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 277-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations by superseding AD 85-12-04, Amendment 39-5076 (50 FR 3919, May 28, 1985), which is applicable to Aerospatiale Model Nord 262A series airplanes, was published in the Federal Register on March 31, 1992 (57 FR 10838). The action proposed to require a visual and X-ray inspection of the rudder hinge support assembly for corrosion, and replacement of one or both supports of the rudder hinge support assembly, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Paragraph (f) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD. It will take approximately 9 work hours per airplane to accomplish the required inspections. (It should be noted that this number of work hours is no greater than the number of work hours necessary to complete the actions required by the existing AD.) To accomplish the optional modification will require an additional 4 work hours. The average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the AD is estimated to be \$6,930 to accomplish the required inspections, or \$495 per airplane. (This total cost figure assumes that no operator has yet accomplished the requirements of this AD.) The cost to U.S. operators who elect to accomplish the optional modification will be an additional \$220 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is

not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8287 Docket 92-5076 (50 FR 3919, May 28, 1985), and by adding a new airworthiness directive (AD), amendment 39-8287, to read as follows:

92-14-05. Aerospatiale: Amendment 39-8287. Docket 92 NM-05-AD. Supersedes AD 85-12-04, Amendment 39-5076.

Applicability: Model Nord 262A airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the rudder hinge support assembly, that could lead to loss of rudder control, accomplish the following:

(a) Within 100 hours time-in-service or three months, whichever occurs first after July 5, 1985 (the effective date of AD 85-12-04, Amendment 39-5076), inspect and protect against corrosion, or replace components if necessary, in accordance with paragraph II, Accomplishment Instructions, of Aerospatiale N262 Frege Service Bulletin No. 55-10, Revision 2, dated January 31, 1984. Repeat the inspection at intervals not to exceed 6 years.

(b) Within 6 years after the most recent inspection performed in accordance with paragraph (a) of this AD, perform a visual and X-ray inspection of the rudder hinge support assembly for corrosion and apply corrosion protection treatments, in accordance with Aerospatiale 262-Frege Service Bulletin No. 55-10, Revision 3, dated May 25, 1991. Compliance with this paragraph constitutes terminating action for

the inspection requirements of paragraph (a) of this AD.

(c) As a result of the visual inspection required by paragraph (b) of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD, as applicable:

(1) If no corrosion is detected, repeat the visual inspection at intervals not to exceed 6 years.

(2) If corrosion is detected, accomplish either paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable:

(i) If internal corrosion is penetrating tube walls, or if deformation or buckling is evidenced, or if external corrosion is outside the tolerance limits specified in *Aerospatiale 262-Fregate Service Bulletin No. 55-10, Revision 3, dated May 25, 1991*: Prior to further flight, replace corroded components in accordance with *Aerospatiale 262-Fregate Service Bulletin No. 55-11, Revision 2, dated May 25, 1991*. Thereafter, at intervals not to exceed 6 years, repeat the visual inspection of tubes not replaced, as well as tubes replaced as a result of accomplishing Modification 861 described in the *Service Bulletin 55-11, Revision 2, dated May 25, 1991*.

(ii) If internal corrosion is not penetrating tube walls, or if external corrosion is within the tolerance limits specified in *Aerospatiale 262-Fregate Service Bulletin No. 55-10, Revision 3, dated May 25, 1991*: Prior to further flight, apply external protective treatment in accordance with that *Aerospatiale service bulletin*. Thereafter, repeat the visual inspection at intervals not to exceed 6 years.

(d) As a result of the X-ray inspection required by paragraph (b) of this AD, accomplish either paragraph (d)(1) or (d)(2) of this AD, as applicable:

(1) If no corrosion or buckling is detected: Prior to further flight apply internal protective treatment, in accordance with *Aerospatiale 262-Fregate Service Bulletin No. 55-10, Revision 3, dated May 25, 1991*.

(2) If any corrosion is detected, accomplish either paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable:

(i) If corrosion is detected on both tubes of the upper support tube section, or on the lower support tube section, or on the support tube assembly: Prior to further flight, replace corroded components in accordance with *Aerospatiale 262-Fregate Service Bulletin No. 55-10, Revision 3, dated May 25, 1991*.

(ii) If corrosion is detected on only one tube of the upper or lower support tube sections: Within 3 months or 600 landings of the discovery of corrosion, whichever occurs first, replace corroded components in accordance with *Aerospatiale 262-Fregate Service Bulletin No. 55-10, Revision 3, dated May 25, 1991*.

(e) Accomplishment of Modification 866, in accordance with *Aerospatiale 262-Fregate Service Bulletin No. 55-11, Revision 2, dated May 25, 1991*, constitutes terminating action for the inspections required by this AD for the component replaced.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA,

Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections, corrosion protection treatments, and replacement shall be done in accordance with *Aerospatiale N262 Fregate Service Bulletin No. 55-10, Revision 3, dated May 25, 1991*; or *Aerospatiale N262 Fregate Service Bulletin No. 55-10, Revision 2, dated January 31, 1984*, which contains the following list of effective pages:

Page No.	Revision level	Date
1, 10-12	2	Jan. 31, 1984.
2-9, 13-18	1	Dec. 29, 1981.

The modification shall be done in accordance with *Aerospatiale 262-Fregate Service Bulletin No. 55-11, Revision 2, dated May 25, 1991*, which contains the following list of effective pages:

Page No.	Revision level	Date
1-6	2	May 25, 1991.
7-13	Original	Dec. 29, 1981.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from *Aerospatiale*, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1801 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(i) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on June 12, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18426 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26929; Amdt. No. 1502]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal

Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3; 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists

for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on July 17, 1992.
Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective October 15, 1992

Lexington, MO, Lexington Muni, VOR RWY 22, Orig., Cancelled
Lexington, MO, Lexington Muni, VOR/DME RWY 22, Orig.

Atlantic City, NJ, Atlantic City Muni/Bader Fld, RNAV RWY 11, Amdt. 4, Cancelled
Falfurrias, TX, Brooks County, NDB RWY 35, Orig.
Falfurrias, TX, Brooks County, NDB-A, Amdt. 1, Cancelled

Effective September 17, 1992

Anniston, AL, Anniston Metropolitan, ILS RWY 5, Amdt. 1
Anniston, AL, Anniston Metropolitan, NDB, RWY 5, Amdt. 2
Columbus, OH, Rickenbacker, ILS 1 RWY 23L, Orig.
Selmer, TN, Robert Sibley, NDB RWY 17, Amdt. 5

Effective August 20, 1992

Fort Huachuca/Sierra Vista, AZ, Libby AAF/Sierra Vista Muni, ILS RWY 26, Orig.
San Francisco, CA, San Francisco Intl, LDA/DME RWY 28R, Orig.
Denver, CO, Stapleton Intl, ILS/DME-1 RWY 8R, Amdt. 6
Denver, CO, Stapleton Intl, Converging ILS/DME-2 RWY 8R, Amdt. 3
Chicago, IL, Chicago O'Hare Intl, NDB RWY 32L, Amdt. 22
Chicago, IL, Chicago O'Hare Intl, ILS RWY 4R, Amdt. 6
Chicago, IL, Chicago O'Hare Intl, ILS RWY 22L, Amdt. 4
Chicago, IL, Chicago O'Hare Intl, ILS RWY 32L, Amdt. 1
Bozeman, MT, Gallatin Field, NDB RWY 12, Amdt. 5
New York, NY, John F. Kennedy Intl, ILS RWY 4L, Amdt. 7
New York, NY, John F. Kennedy Intl, ILS RWY 22R, Amdt. 7, Cancelled
New York, NY, John F. Kennedy Intl, ILS/DME RWY 22R, Orig.
New York, NY, John F. Kennedy Intl, ILS RWY 31L, Amdt. 8
Las Cruces, NM, Las Cruces Intl, NDB RWY 8, Orig.

Effective July 14, 1992

Jacksonville, FL, Craig Muni, ILS RWY 32, Amdt. 2

[FR Doc. 92-18414 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Substantial Hazard Reports; Revision to Interpretative Rule Governing Substantial Hazard Reporting

AGENCY: Consumer Product Safety Commission.

ACTION: Revision to rule.

SUMMARY: Because of changes in its statute, the Consumer Product Safety Commission revises its interpretative rules regarding the reporting of possible substantial product hazards. The Consumer Product Safety Improvement Act of 1990 amended section 15(b) of the Consumer Product Safety Act (CPSA) to

add provisions requiring that every manufacturer (including an importer), distributor, and retailer of a consumer product who obtains information which reasonably supports the conclusion that its product fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, or creates an unreasonable risk of serious injury or death, shall immediately inform the Commission of such failure to comply, or of such risk, unless the manufacturer, distributor or retailer has actual knowledge that the Commission has been adequately informed. Previously, section 15(b) of the CPSA required reports only when a product "fails to comply with an applicable consumer product safety rule" or "contains a defect which could create a substantial product hazard described in subsection (a)(2)." (These reports are still required.)

DATES: The revisions become effective September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0626.

SUPPLEMENTARY INFORMATION:

Background Information

The Consumer Product Safety Act, 15 U.S.C. 2051, *et seq.* (CPSA) was enacted on October 27, 1972. Among other things, that Act required that every manufacturer, distributor, and retailer of a consumer product distributed in commerce who

obtains information which reasonably supports the conclusion that such product—(1) fails to comply with an applicable consumer product safety; or (2) contains a defect which could create a substantial product hazard * * * shall immediately inform the Commission of such failure to comply or of such defect, unless (they have) actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b).

The Commission published its interpretation of section 15(b) on August 7, 1978. 16 CFR part 1115. Each year, the Commission receives approximately 150 to 200 reports. Hundreds of these reports resulted in product recalls; other provided useful hazard information to the Commission.

For a long time, the Commission has been concerned that some firms have not been complying with the reporting obligations. Despite the publication of a statement of enforcement policy, 49 F.R. 13,820 (April 6, 1984), and numerous civil

penalty cases against firms which failed to report or failed to report in a timely manner, the number of reports has remained relatively static and firms, with some exceptions, have tended to report relatively minor hazards rather than the more serious ones.

Since Congress shared the Commission's concern about the "inadequacy of the current level of product hazard reporting under section 15(b) of the CPSA," changes were enacted to section 15(b) that would "address this problem." Report of the House Committee on Energy and Commerce, H.R. Rep. No. 567, 101st Cong., 2nd Sess. 21-22 (1990). The Senate Committee on Commerce, Science, and Transportation, which drafted the new reporting language for section 15(b), noted that "the intention of section 15(b) was to encourage widespread reporting of potential hazards" but noted that "(m)anufacturers are reluctant to indicate that their products may contain a defect or do not believe their products to be defective, and so often do not supply the CPSC with notice under the law." Report of the Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 37, 101st Cong., 1st Sess. 10 (1990). Therefore, it enacted additional requirements to increase the number of reports.

The new reporting requirements in the Consumer Product Safety Improvement Act of 1990, Public Law 101-608, 104 Stat. 3110 (November 16, 1990) (Improvement Act) broadened the reporting obligations under section 15(b) of the CPSA by mandating two additional notification requirements. First, manufacturers, distributors, and retailers must notify the Commission about products that fail to comply with an applicable voluntary standard upon which the Commission has relied under section 9 of the CPSA. Section 15(b)(1) of the CPSA, 15 U.S.C. 2064(b)(1). Second, they must report products that create an unreasonable risk of serious injury or death. Section 15(b)(3) of the CPSA, 15 U.S.C. 2064(b)(3).

To implement the new statutory requirements, the Commission proposed changes in its interpretative rule governing substantial hazard reports, 16 CFR part 1115, on October 28, 1991. 56 FR 55530. Several trade associations, firms, individuals and consumer groups filed comments.

General Comments

A. Purpose of the Proposed Amendments

Several commenters urged the Commission to make clear in this notice that the amendments to the section 15(b)

interpretation are intended to broaden the reporting obligation under section 15(b) of the CPSA.

Although the Commission in general agrees with this interpretation, it sees no reason to add any additional language to the preamble. The revisions set forth in this **Federal Register** notice are intended to add and implement the new reporting obligations. They do not otherwise alter or amend the agency's previous interpretations of section 15(b) in any way.

B. Enforcement of Section 15

One commenter expressed the opinion that the section 15(b) reporting requirements should be carefully and evenly enforced and alleged that the Commission had not enforced a particular voluntary standard in the past. Section 15 authorizes the Commission to initiate administrative proceedings for corrective action against firms whose products contain a defect that creates a substantial product hazard. In some cases, non-compliance with a voluntary standard may constitute a defect or defects that create a substantial product hazard, but a non-compliance with a voluntary standard is not *per se* a substantial product hazard. As explained in more detail below, firms must report if their product fails to comply with a voluntary standard if that voluntary standard was relied upon by the Commission under section 9, the non-compliance presents a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. The Commission intends to enforce vigorously these requirements.

Section by Section Analysis of Comments

Section 1115.2(c) Reporting of Potential Hazards.

One commenter suggested amending this section, which recognizes that a section 15(b) report does not always indicate the presence of a substantial product hazard, to make it clear that Congress and the Commission expect firms to report *potential hazards*. Although the Commission agrees that firms should not await a conclusive hazard analysis before determining whether to report, it believes that this is already clear. The rule already explains at several points that firms have an obligation to report potential hazards. For example, 16 CFR 1115.12(a) states:

Subject firms should not delay reporting in order to determine to a certainty the existence of a reportable noncompliance, defect or unreasonable risk. The obligation to report arises upon receipt of information from which one could reasonably conclude the

existence of a noncompliance, defect which could create a substantial product hazard, or unreasonable risk of serious injury or death. Thus an obligation to report may arise when a subject firm receives the first information regarding a potential hazard, noncompliance or risk.

Given the language of the regulations and the Commission's enforcement history, subject firms should be aware that they have an obligation to show due diligence in their handling of information about their products and to make reasonable decisions about reporting. Congress has increased the amount of penalties the Commission may seek against firms that fail to report or do not report in a timely manner.

Section 1115.5(a) *Voluntary Standards.*

This section requires firms to report non-compliance with voluntary standards relied upon by the Commission under section 9 of the CPSA since August 13, 1991. The Commission has identified portions of two standards that it relied upon during that time period. (See the appendix to this rule.) Several commenters challenged the Commission's decision to apply the reporting obligation to voluntary standards relied upon by the Commission before passage of the Improvement Act. Others supported the Commission's draft. Those who challenged the Commission's interpretation argued that the Commission is impermissibly applying this reporting provision "retroactively." The Commission does not agree that its interpretation has "retroactive effect" because the obligation to report arises after the passage of the Improvement Act. The reporting requirement does not change or affect conduct that occurred before its passage.

For example, this amendment does not ban non-conforming products already manufactured, subject them to recalls, or impose an automatic reporting requirement. It merely requires reports about products that were manufactured after the new reporting obligation existed that do not comply with a voluntary standard adopted prior to passage of the Improvement Act. A statute is not rendered retroactive merely because its action draws on antecedent facts for its operation. See, e.g., *Campbell v. United States*, 809 F.2d 563, 571, (9th Cir 1987); *Alexander v. Robinson*, 756 F.2d 1153, 1155 n. 5 (5th Cir. 1985).

While it can also be argued that the use of the term "has relied" in the amendment supports a retroactive application; the Commission does not believe that its interpretation is in fact "retroactive."

When reliance may take place.

ANPRS. Several commenters suggest that for reporting purposes, the Commission may only "rely" upon a voluntary standard after it has issued an ANPR. Since it agrees with the commenters that it does not rely upon a voluntary standard in deciding not to publish an ANPR or denying a petition, the Commission has narrowed its interpretation.

The Commission agreed with the commenters who argued that reliance under section 9 can only occur after the Commission commences a rulemaking proceeding by publishing an ANPR. The Commission noted that the sole specific reference to reliance on a voluntary standard occurs in section 9(b)(2) which sets forth the procedures and criteria the Commission must follow in evaluating whether to rely upon a voluntary standard submitted in response to the ANPR. The Commission believed that it was logical to read the language in section 15 "upon which the Commission has relied under section 9" as applying only to stages of the rulemaking process that follow publication of the ANPR. The Commission has listed only two standards that it believes were relied upon in the past (see appendix); one that resulted from a lengthy rulemaking after publication of an ANPR and the other that resulted from withdrawal of an existing product safety rule.

To clarify its procedures for reliance upon voluntary standards, the Commission has modified § 1115.5(a) to indicate the procedures it will follow to publicize its actions and obtain public comment.

Reporting of noncompliance with other voluntary standards. One commenter expressed concern that this provision implies that failure to comply with a voluntary standard that has not been relied upon by the Commission would never require a section 15(b) report. The commenter recommended adding language to this discussion to emphasize that a firm may have an obligation to report noncompliance with a voluntary standard under sections 15(b)(1) or (3), the defect or unreasonable risk reporting clauses. The Commission agrees that a failure to comply with a voluntary standard may in many instances constitute a reportable defect or unreasonable risk. Voluntary standards often represent an industry consensus as to the minimum requirements for a particular product. A product that does not meet such industry norms may be defective or present an unreasonable risk of injury. However, the Commission believes the change is unnecessary since § 1115.5(b) already reminds firms of their

obligations to evaluate whether noncompliance with a voluntary standard is reportable under those clauses.

Explicit reliance. The proposal required that the Commission must "explicitly" make the findings necessary for it to rely upon a voluntary standard. Some commenters said this language was too restrictive. The Commission disagrees. In reviewing past Commission actions, the Commission found that there have been numerous instances in the past where the Commission denied a petition, or otherwise chose not to proceed with a consumer product safety rule. In many such cases, the record indicates that the Commission decided not to proceed with a mandatory standard for legal and policy reasons having nothing to do with reliance on a voluntary standard.

The Commission is aware of the need to make clear decisions in this area. In the future, it will insure that the record clearly states whether it has made the requisite findings to rely on a voluntary standard.

Appendix. Several commenters stated that the Appendix to this section should be modified to add an additional standard to the list of voluntary standards relied upon by the Commission. In its consideration of what standards the Commission might have relied upon before November 17, 1990, the Commission examined the records of many previous proceedings. The Commission found that the records in previous Commission decisions were often unclear and determined that for section 15(b) reporting purposes, evidence of reliance had to be explicitly articulated in the form of a Federal Register notice.

On this basis, the Commission found that it has relied upon only the two voluntary standards listed in the Appendix. In one, the record showed Commission reliance at the time of termination of a rulemaking proceeding. In the other, the record demonstrated reliance in the context of withdrawal of an existing rule. After consideration of the comments and an examination of the record, the Commission sees no reason to change these determinations.

Section 1115.5(b) *Designation of the Provisions of a Voluntary Standard That are Relied Upon.*

Several commenters suggested that the Commission should designate the portions of a voluntary standard that it relies upon. The Commission has done so in the Appendix to this notice and intends to continue to do so in the future.

Changes to voluntary standards. The proposal stated that if the voluntary

standard relied upon by the Commission is modified after Commission reliance, firms must report non-compliance with new versions of the voluntary standard. It was the Commission's intent that firms would have to report only non-compliances in products manufactured after the effective date of the new version of the voluntary standard. Several commenters have objected to this approach and argued that it places a burden on firms to keep up with new versions of the voluntary standard. They suggest that only those modifications specifically approved by the Commission should be reportable. Other commenters supported the idea of requiring reports of violations of future versions of the voluntary standard but only if the provisions of the voluntary standard were not watered down to require a less stringent approach to safety.

The Commission has considered these comments and decided to modify this provision. To avoid confusion in the marketplace and pursuant to section 7(b)(2) of the CPSA, the Commission will monitor voluntary standards upon which it has relied. If the standard is changed, the Commission will determine whether it chooses to rely upon the change and notify the public of that decision. The Commission has also made provisions for situations where changes to a voluntary standard become effective before the Commission makes a decision about which version of the standard that are not substantive. Section 1115.5(b) has been amended to add this procedure.

Section 1115.6(a). *Reporting of Information About Unreasonable Risks of Serious Injury or Death.*

This provision suggests that firms should not await actual serious injuries or deaths before reporting and lists certain information that could trigger a report under this provision. Several commenters question whether a report could be triggered by, among other things, "reports from experts." (This issue is also raised in the context of § 1115.12(f), which sets forth information which should be studied and evaluated to determine whether a firm has an obligation to report.) They also question whether an article in a consumer magazine, or similar information, should trigger a report and argue that such information may be unreliable.

The Commission does not intend to require firms to report every time they receive negative information about their product. A firm, however, cannot escape an obligation to report merely by challenging the reliability of the source of the information. A reasonably diligent

firm would approach such information in the light of all of its knowledge about its product. As one commenter noted, in some situations a single report or item of information such as an expert opinion may trigger a report because it reasonably supports a determination that the product presents an unreasonable risk of serious injury or death. In other cases, the firm may reasonably determine that the report or information does not reasonably support the conclusion that a reporting obligation exists. In all cases, the firm must exercise due care to evaluate such reports and information in the context of all of the information it has obtained about its product.

1115.6(b) *Lawsuits and Unreasonable risk.* This section describes the analysis a firm must make in determining whether a product presents a reportable unreasonable risk of injury. Several commenters agreed that section 15(b)(3) does not require firms to report every time a court or jury determines that the product presents an unreasonable risk or unreasonable danger in a product liability case involving serious injury or death. However, other commenters suggested that the Commission add language emphasizing the importance of product liability judgments to a firm's determination of whether it must report under section 15(b)(3) of the CPSA.

The Commission has considered these comments and added a provision to § 1115.6(a)(2) to clarify that, as a practical matter, the Commission will attach considerable significance to an adverse product liability judgment or settlement when it evaluates whether the firm complied with its reporting obligation, even though this does not trigger a per se reporting requirement.

An adverse product liability judgment is the kind of event that should cause a firm to carefully examine what it knows about its product and may lead the firm to conclude that a reportable defect or unreasonable risk of injury exists. The Court's decision that a product is defective or presents an unreasonable risk or danger merits careful consideration for reporting purposes under section 15(b). A firm must carefully consider whether the product in the liability case was unique and unlike the other products it distributed or whether the information it possesses about its product, including knowledge of the liability judgment, would cause a reasonable person to report. This provision is intended to encourage firms to make the kind of careful and reasonable analysis required by section 15(b)(3) of the CPSA.

State of the manufacturing or scientific art. One commenter objected to the statement that firms should evaluate "the state of the manufacturing or scientific art" as well as other factors when it examines whether a product presents an unreasonable risk under section 15(b)(3). The commenter argued that such new products are often "untested" and suggested that products should only be measured against "proven methods of design." The Commission disagrees. The legislative history of the Improvement Act suggests that the same kind of risk/utility analysis that assists in rulemaking decisions under section 7 is relevant to the term unreasonable risk under section 15(b)(3) of the CPSA. 135 Cong. Rec. S10,052 (1989) (Statement of Senator Bryant). The Commission considers the state of the manufacturing and scientific arts in rulemaking under section 7. The same factors are also considered by courts and juries in product liability cases throughout the country. Therefore, the Commission considers it appropriate for firms to evaluate the state of the manufacturing or scientific art, among other pertinent factors, in deciding whether to report.

One commenter objected to the language in this section which states that "[t]he Commission expects firms to report if a 'reasonable person could conclude given the information available' that a product creates an unreasonable risk of serious injury or death." The commenter believes that the use of the word "could" "would create an absurdly low threshold for manufacturers to report products to the Commission." The Commission believes that the commenter's concerns are unfounded.

The Commission used this language to reflect the legislative intent that a "reasonable person" standard applies to determination of "unreasonable risk of death or serious injury." This language was taken directly from the report of the Senate Committee on Commerce, Science and Transportation, S. Rep. No. 37, 101st Cong., 1st Sess. 11 (1989). The Committee intended that "manufacturers will be held to a 'reasonable person' standard regarding unreasonable risk of serious injury or death. The correct inquiry is whether a reasonable person could conclude, given the information available to the manufacturer, that the product creates such a risk." (Emphasis added.) The Commission interpretation retains this language.

Transferred Act Violations. The proposal states that a subject firm must report if it obtains information which

reasonably supports the conclusion that its product violates a standard or ban promulgated under the FFA, FFA, PPPA or RSA, and the violation could result in serious injury or death. Several commenters objected, arguing that this is tantamount to a Commission interpretation equating such violations with "unreasonable risk" under section 15(b)(3). One commenter also argued against the use of the term "could result in serious injury or death." (Emphasis added.) Other commenters supported the Commission interpretation.

The Commission has considered the comment that had Congress intended the reporting of violations of transferred act rules, it could have mandated such an obligation explicitly as it did for violations of CPSC rules in section 15(b)(1), and agrees that it contains some merit on its face. Violation of a transferred act regulation is not *per se* reportable. The Commission's interpretation of this provision is that it may require reporting only if the violation of a regulation under a transferred act presents a risk of serious injury or death. Other commenters argued that whether the product violated a regulation under one of the transferred acts is just one of the factors that should be considered in a risk/utility analysis a firm makes before determining whether an unreasonable risk exists. Again, the Commission has found some merit in this assertion, and has modified its interpretation to assure the public that such a violation, by itself, does not pose a *per se* reporting obligation.

Before publishing its proposal, the Commission carefully considered the findings that it makes when it promulgates standards and bans under the FFA, FFA, PPPA, and RSA. The Commission has found that in many cases it, or its predecessor agencies, has made explicit or implicit findings that products violative of substantive regulations under these Acts present an unreasonable risk. Therefore, it has determined that such a violation may raise a presumption that such non-conforming products present an unreasonable risk. For these reasons, after considering the comments, the Commission has modified this provision to state that in its evaluation of whether a firm has complied with its reporting obligations under this provision, the Commission will attach considerable significance if the firm has obtained information which reasonably supports the conclusion that its product violates a standard or ban under one of the transferred acts.

The Commission notes that many of

the products that fail to comply with a regulation under a transferred act and may, therefore, be reportable under section 15(b)(3) may also be reportable under section 15(b)(2). A non-compliance in a product will usually render a product defective because the non-compliance is a fault, flaw or irregularity in the product. A report is necessary if such a defect could create a substantial risk of injury. (See 16 CFR 1115.4 for a discussion of the meaning of the term "defect" and 16 CFR 1115.10 regarding reporting and the transferred acts.)

Several commenters misconstrued the meaning of the term "could result" in this provision, arguing that the Commission was broadening the obligation to report products that create an unreasonable risk of serious injury or death. The Commission included the language "could result" to convey the idea that actual injuries do not have to occur before the subject firm reports the unreasonable risk. If the unreasonable risk has not yet resulted in death or serious injury, but such a result is reasonably foreseeable, then firms should not wait for actual deaths or serious injuries to occur before reporting.

Retroactivity. One commenter questioned whether the new unreasonable risk language should be applied retroactively. It hypothesized a situation where a firm has previously determined that a product did not contain a defect which could create a substantial risk of injury. The commenter questioned whether it was not improper to require that firm to reevaluate that product to determine whether it presented an unreasonable risk of injury. By its terms, section 15(b) applies to a product "distributed in commerce" that "creates an unreasonable risk of serious injury or death." The Commission has taken the position that this language clearly expresses a Congressional intent that the reporting obligation applies to products distributed in commerce prior to the effective date of the Improvement Act. See *In the Matter of Relco, CPSC Docket No. 74-4, Interim Initial Decision and Order* (April 29, 1975). The legislative history indicates that Congress thought adding an unreasonable risk provision would encourage firms that had been reluctant to admit the existence of defects in their products to report. Report of the House Committee on Energy and Commerce, H.R. Rep. No. 567, 101st Cong., 2d Sess. 22 (1990). Therefore, the Commission interprets the reporting requirement to apply to products that have already

been distributed in commerce. Thus, even if a firm has previously evaluated information it had obtained about its product and determined that the product did not contain a reportable defect, it must reevaluate information it has obtained about the product to determine if the product creates an unreasonable risk of serious injury or death. This does not mean that a firm necessarily should have reported such a product in accordance with section 15(b)(2), but, rather that a new, prospective, reporting requirement may be triggered in accordance with section 15(b)(3).

Section 1115.6(c). *Definition of Serious Injury.*

Several commenters contend that the definition of serious injury in the proposed rule was too broad, suggesting that not all injuries that receive medical attention or cause loss of school or work time are "serious." They argued either that the definition of "serious injury" should be the same as the definition of "grievous bodily injury," or at least that injuries should be more "serious" than those enumerated in the proposal. Other commenters believed that the definition of serious injury was too weak since it states that the examples "might" be serious injuries. They argued that the regulation should state that these "are" examples of serious injury.

Congress' choice of the term "serious injury" in section 15(b)(3), instead of the term "grievous bodily injury" used in section 37, demonstrates an intent to broaden the reporting provision beyond grievous injuries. The proposed rule attempted to reflect this intent, while providing some guideposts to distinguish serious from minor injuries. Nevertheless, after consideration of the comments, the Commission agrees that some of the examples given were too broad and imprecise. The Commission also agrees that the term "might" did not provide adequate guidance. As a result, it has amended this section. Subject firms should note that these are merely examples of situations in which the Commission shall presume that such a serious injury has occurred. Firms must evaluate all the information they have obtained about their products to determine whether the products create an unreasonable risk of serious injury.

Section 1115.7. *Relation to other Provisions.*

Several commenters were concerned about the relationship between reporting under section 15(b) and the provisions of new section 37. Some suggested that the Commission state an intent to investigate all section 37 reports to determine whether a report should have been filed under section 15(b). The Commission sees no reason to state

such an inflexible rule. As the Commission receives section 37 reports, it will certainly be aware of the reporting requirements under section 15(b) and will pursue such investigations as warranted.

Other commenters suggested that sections 15 and 37 might cause "double reporting" since the same problem reported under section 15(b) might result in settlements or judgments that would trigger a section 37 report. One commenter suggested eliminating the requirement for the section 37 report in such cases. The Commission believes that some overlap between these reporting requirements is possible. However, section 37 is intended to be a non-discretionary catch-all requirement. Since the staff ordinarily requests firms who have reported under section 15(b) to keep them informed about injuries and deaths, there is little additional burden in complying. Therefore, the Commission does not set forth any general exception to reporting under section 37 in such instances. The Commission may, as appropriate in individual cases, make exceptions to this general policy.

One commenter suggested that there is an inconsistency between section 15(b) and section 37 because section 15(b) may require a report if a product does not comply with a voluntary standard relied upon by the Commission. This commenter argues that this reporting obligation requires firms to make products that comply with the voluntary standard. The commenter believes it is incongruous that a firm may have to comply with a voluntary standard for 15(b) purposes, but still need to report settlements or judgments involving such products under section 37.

The Commission does not agree that the reporting obligation for products that fail to comply with a voluntary standard requires manufacturers to make products that comply with the standard. However, the Commission agrees that since Commission reliance was based upon a finding of substantial compliance with the voluntary standards, most firms will comply. The Commission is aware that the reporting requirement of section 37 is complementary to and not identical to the section 15 requirements and that this may result in some overlap between the provisions of these sections. The Commission, however, does not believe that this overlap will create an excessive burden on industry, nor does it see a practical way to limit reporting under section 37 that might not create important gaps in the product information garnered from such reports.

Sections 1115.10-1115.14.

Some commenters suggested minor changes to the language of these sections. Although technical changes were included in these sections to incorporate the 1990 amendments, they largely remained unaltered in substance. These provisions have been in effect since 1978. The Commission has addressed the primary substantive concerns about reporting in the discussions above and sees no need for further changes to these provisions.

EFFECTIVE DATE: This part becomes effective September 3, 1992.

Regulatory Flexibility Analysis

In accordance with section 3 of the Regulatory Flexibility Act, 5 U.S.C. 605, the Commission certifies that this regulation will not have a significant impact upon a substantial number of small entities. This final interpretative regulation simply clarifies the obligations imposed by section 15(b) of the CPSA upon manufacturers, distributors and retailers of consumer products. The final regulation will have no economic impact on small business beyond that which results from the statutory provision.

Environmental Considerations

The final rule below does not fall within any of the categories of Commission activities described in 18 CFR 1021.5(b) which have the potential for producing environmental effects. The Commission does not believe that the final rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstances in which the rule proposed below may produce such effects. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1115

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

In accordance with the provisions of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, the Commission amends part 1115 of title 16, chapter II, of the Code of Federal Regulations as follows:

PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS

1. The authority citation for part 1115 is revised to read as follows:

Authority: 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2069, 2070, 2071, 2073, 2076, 2079 and 2084.

2. Sections 1115.2 (b) and (c) are revised to read as follows:

§ 1115.2 Scope and finding.

(b) Section 15(b) of the CPSA requires every manufacturer (including an importer), distributor, and retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that the product fails to comply with an applicable consumer product safety rule, fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, contains a defect which could create a substantial product hazard described in subsection 15(a)(2) of the CPSA, or creates an unreasonable risk of serious injury or death, immediately to inform the Commission, unless the manufacturer (including an importer), distributor or retailer has actual knowledge that the Commission has been adequately informed of such failure to comply, defect, or risk. This provision indicates that a broad spectrum of safety related information should be reported under section 15(b) of the CPSA.

(c) Sections 15 (c) and (d) of the CPSA, (15 U.S.C. 2064 (c) and (d)), empower the Commission to order a manufacturer (including an importer), distributor, or retailer of a consumer product distributed in commerce that presents a substantial product hazard to give various forms of notice to the public of the defect or the failure to comply and/or to order the subject firm to elect either to repair, to replace, or to refund the purchase price of such product. However, information which should be reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard, because what must be reported under section 15(b) are failures to comply with consumer product safety rules or voluntary standards upon which the Commission has relied under section 9, defects that could create a substantial product hazard, and products which create an unreasonable risk of serious injury or death. (See § 1115.12.)

3. Section 1115.3(c) is revised to read as follows:

§ 1115.3 Definitions.

(c) *Noncompliance* means the failure of a consumer product to comply with

an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA.

4. Sections 1115.5 through 1115.7 are added to read as follows:

§ 1115.5 Reporting of failures to comply with a voluntary consumer product safety standard relied upon by the Commission under section 9 of the CPSA.

(a) *General provision.* Under the CPSA, the Commission may rely on voluntary standards in lieu of developing mandatory ones. In recognition of the role of voluntary standards under the CPSA, section 15(b)(1) requires reports if a product fails to comply with a voluntary standard "upon which the Commission has relied under section 9" of the CPSA. The Commission has relied upon a voluntary consumer product safety standard under section 9 of the CPSA if, since August 13, 1981 it has terminated a rulemaking proceeding or withdrawn an existing consumer product safety rule because it explicitly determined that an existing voluntary standard, or portion(s) thereof, is likely to result in an adequate reduction of the risk of injury and it is likely there will be substantial compliance with that voluntary standard. (See Appendix to this part 1115 for a list of such voluntary standards.) This provision applies only when the Commission relies upon a voluntary standard in a rulemaking proceeding under section 9 of the CPSA, and does not apply when the Commission relies upon a voluntary standard in a rulemaking proceeding under another provision of the CPSA or one of the transferred acts. In evaluating whether or not to rely upon an existing voluntary standard, the Commission shall adhere to all the procedural safeguards currently required under the provisions of the CPSA, including publication in the Federal Register of the Commission's intent to rely upon a voluntary standard in order to provide the public with a fair opportunity to comment upon such proposed action.

(b) *Reporting requirement.* A firm must report under this section if it has distributed in commerce, subsequent to the effective date of the Consumer Product Safety Improvement Act of 1990 (November 16, 1990), a product that does not conform to a voluntary standard or portion(s) of a voluntary standard relied upon by the Commission since August 13, 1981. If the Commission relied upon only a portion(s) of a voluntary standard, a firm must report under this section only nonconformance with the portion(s) of the voluntary standard relied upon by the Commission.

Pursuant to section 7(b)(2) of the CPSA, the Commission shall monitor any modifications of a voluntary standard upon which it has relied and determine, as a matter of policy, at the time any substantive safety related modification is adopted, whether it shall continue to rely upon the former standard or whether it shall rely, subsequently, upon the modified standard. The Commission shall publish such decisions in the Federal Register. Until the Commission makes such a decision, subject firms need not report under this provision a product which complies with either the original version of the voluntary standard relied upon by the Commission or the new version of the standard. A firm must continue to evaluate whether deviations from other portions of a voluntary standard, or other voluntary standards not relied upon by the Commission, either constitute a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

§ 1115.6 Reporting of unreasonable risk of serious injury or death.

(a) *General provision.* Every manufacturer, distributor, and retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that its product creates an unreasonable risk of serious injury or death is required to notify the Commission immediately. 15 U.S.C. 2084(b)(3). The requirement that notification occur when a responsible party "obtains information which reasonably supports the conclusion that" its product creates an unreasonable risk of serious injury or death is intended to require firms to report even when no final determination of the risk is possible. Firms must carefully analyze the information they obtain to determine whether such information "reasonably supports" a determination that the product creates an unreasonable risk of serious injury or death. (See § 1115.12(f) for a discussion of the kinds of information that firms must study and evaluate to determine whether they have an obligation to report.) Firms that obtain information indicating that their products present an unreasonable risk of serious injury or death should not wait for such serious injury or death to actually occur before reporting. Such information can include reports from experts, test reports, product liability lawsuits or claims, consumer or customer complaints, quality control data, scientific or epidemiological studies, reports of injury, information from other firms or governmental entities, and other relevant information. While such information shall not trigger a *per se*

reporting requirement, in its evaluation of whether a subject firm is required to file a report under the provisions of section 15 of the CPSA, the Commission shall attach considerable significance if such firm learns that a court or jury has determined that one of its products has caused a serious injury or death and a reasonable person could conclude based on the lawsuit and other information obtained by the firm that the product creates an unreasonable risk of serious injury or death.

(b) *Unreasonable risk.* The use of the term "unreasonable risk" suggests that the risk of injury presented by a product should be evaluated to determine if that risk is a reasonable one. In determining whether a product presents an unreasonable risk, the firm should examine the utility of the product, or the utility of the aspect of the product that causes the risk, the level of exposure of consumers to the risk, the nature and severity of the hazard presented, and the likelihood of resulting serious injury or death. In its analysis, the firm should also evaluate the state of the manufacturing or scientific art, the availability of alternative designs or products, and the feasibility of eliminating the risk. The Commission expects firms to report if a reasonable person could conclude given the information available that a product creates an unreasonable risk of serious injury or death. In its evaluation of whether a subject firm is required to file a report under the provisions of section 15 of the CPSA the Commission shall, as a practical matter, attach considerable significance if such firm obtains information which reasonably supports the conclusion that its product violates a standard or ban promulgated under the FHSA, PFA, PPPA or RSA and the violation could result in serious injury or death.

(c) *Serious injury or death.* The term "serious injury" is not defined in the CPSA. The Commission believes that the term includes not only the concept of "grievous bodily injury," defined at § 1115.12(d), but also any other significant injury. Injuries necessitating hospitalization which require actual medical or surgical treatment, fractures, lacerations requiring sutures, concussions, injuries to the eye, ear, or internal organs requiring medical treatment, and injuries necessitating absence from school or work of more than one day are examples of situations in which the Commission shall presume that such a serious injury has occurred. To determine whether an unreasonable risk of serious injury or death exists, the firm should evaluate chronic or long term health effects as well as immediate injuries.

§ 1115.7 Relation to other provisions.

The reporting requirements of section 37 of the CPSA (15 U.S.C. 2084) are in addition to the requirement in section 15 of the CPSA. Section 37 requires a product manufacturer to report certain kinds of lawsuit information. It is intended as a supplement to, not a substitute for, the requirements of section 15(b) of the CPSA. Whether or not a firm has an obligation to provide information under section 37, it must consider whether it has obtained information which reasonably supports the conclusion that its product violates a consumer product safety rule, does not comply with a voluntary safety standard upon which the Commission has relied under section 9, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. If a firm has obtained such information, it must report under section 15(b) of the CPSA, whether or not it is required to report under section 37. Further, in many cases the Commission would expect to receive reports under section 15(b) long before the obligation to report under section 37 arises since firms have frequently obtained reportable information before settlements or judgments in their product liability lawsuits.

5. In § 1115.10, remove the words "Product Defect Correction Division" and add, in their place, the words "Office of Compliance and Enforcement, Division of Corrective Actions" in paragraphs (a) and (b); redesignate paragraphs (c) and (d) as paragraphs (e) and (f); and add new paragraphs (c) and (d) to read as follows:

§ 1115.10 Persons who must report and where to report.

(c) Every manufacturer (including importer), distributor, and retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, shall immediately notify the Commission's Office of Compliance and Enforcement, Division of Corrective Actions or such other persons as may be designated.

(d) Every manufacturer (including importer), distributor, and retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product creates an unreasonable risk of serious injury or death shall immediately notify the Commission's Office of Compliance and Enforcement, Division of Corrective

Actions or such other persons as may be designated. This obligation applies to manufacturers, distributors and retailers of consumer products subject to regulation by the Commission under the Flammable Fabrics Act, Federal Hazardous Substances Act, Poison Prevention Packaging Act, and Refrigerator Safety Act as well as products subject to regulation under the CPSA.

6. Section 1115.12 is amended by revising paragraphs (a) and (b), by redesignating paragraphs (c) through (f) as paragraphs (d) through (g), by adding new paragraph (c), and by revising newly redesignated paragraph (f) to read as follows:

§ 1115.12 Information which should be reported; evaluating substantial product hazard.

(a) *General.* Subject firms should not delay reporting in order to determine to a certainty the existence of a reportable noncompliance, defect or unreasonable risk. The obligation to report arises upon receipt of information from which one could reasonably conclude the existence of a reportable noncompliance, defect which could create a substantial product hazard, or unreasonable risk of serious injury or death. Thus, an obligation to report may arise when a subject firm received the first information regarding a potential hazard, noncompliance or risk. (See § 1115.14(c).) A subject firm in its report to the Commission need not admit, or may specifically deny, that the information it submits reasonably supports the conclusion that its consumer product is noncomplying, contains a defect which could create a substantial product hazard within the meaning of section 15(b) of the CPSA, or creates an unreasonable risk of serious injury or death. After receiving the report, the staff may conduct further investigation and will preliminarily determine whether the product reported upon presents a substantial product hazard. This determination can be based on information supplied by a subject firm or from any other source. If the matter is adjudicated, the Commission will ultimately make the decision as to substantial product hazard or will seek to have a court make the decision as to imminent product hazard.

(b) *Failure to comply.* A subject firm must report information indicating that a consumer product which it has distributed in commerce does not comply with an applicable consumer product safety standard or ban issued under the CPSA, or a voluntary consumer product safety standard upon

which the Commission has relied under section 9 of the CPSA.

(c) *Unreasonable risk of serious injury or death.* A subject firm must report when it obtains information indicating that a consumer product which it has distributed in commerce creates an unreasonable risk of serious injury or death.

(f) *Information which should be studied and evaluated.* Paragraphs (f)(1) through (7) of this section are examples of information which a subject firm should study and evaluate in order to determine whether it is obligated to report under section 15(b) of the CPSA. This information should be evaluated to determine whether it suggests the existence of a noncompliance, a defect, or an unreasonable risk of serious injury or death:

- (1) Information about engineering, quality control, or production data.
- (2) Information about safety-related production or design change(s).
- (3) Product liability suits and/or claims for personal injury or damage.
- (4) Information from an independent testing laboratory.
- (5) Complaints from a consumer or consumer group.
- (6) Information received from the Commission or other governmental agency.
- (7) Information received from other firms, including requests to return a product or for replacement or credit. This includes both requests made by distributors and retailers to the manufacturer and requests from the manufacturer that products be returned.

7. Section 1115.13 is amended by removing the words "Product Defect Corrections Division" and adding in their place "Office of Compliance and Enforcement, Division of Corrective Actions" in paragraph (a) and by revising paragraphs (b), (c) introductory text, (c)(3), (d) introductory text, (d)(4), (d)(5), the first sentence of (d)(6), (d)(10) and (d)(11) to read as follows:

§ 1115.13 Content and Form of Reports; delegations of authority.

(b) *Distributors and retailers.* A distributor or retailer of a product (who is neither a manufacturer nor an importer of that product) satisfies the initial reporting requirements either by telephoning or writing the Office of Compliance and Enforcement, Division of Corrective Actions, Consumer Product Safety Commission, Washington, D.C. 20207, phone 301-504-0608; by sending a letter describing the

noncompliance, defect or risk of injury to the manufacturer (or importer) of the product and sending a copy of the letter to the Commission's Division of Corrective Actions; or by forwarding to the Commission's Division of Corrective Actions reportable information received from another firm. A distributor or retailer who receives reportable information from a manufacturer (or importer) shall report to the Commission unless the manufacturer (or importer) informs the distributor or retailer that a report has been made to the Commission. A report under this paragraph should contain the information detailed in paragraph (c) of this section insofar as it is known to the distributor or retailer. Unless further information is requested by the staff, this action will constitute a sufficient report insofar as the distributor or retailer is concerned.

(c) *Initial report.* Immediately after a subject firm has obtained information which reasonably supports the conclusion that a product fails to comply with an applicable consumer product safety rule or a voluntary standard, contains a defect which could create a substantial risk of serious injury or death, the subject firm should provide the Division of Corrective Actions, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207 (telephone: 301-504-0608), with an initial report containing the information listed in paragraphs (c) (1) through (6) of this section. This initial report may be made by any means, but if it is not in writing, it should be confirmed in writing within 48 hours of the initial report. (See § 1115.14 for time computations.) The initial report should contain, insofar as is reasonably available and/or applicable:

(3) The nature and extent of the possible defect, the failure to comply, or the risk.

(d) *Full report.* Subject firms which file initial reports are required to file full reports in accordance with this paragraph. Retailers and distributors may satisfy their reporting obligations in accordance with § 1115.13(b). At any time after an initial report, the staff may modify the requirements detailed in this section with respect to any subject firm. If the staff preliminarily determines that there is no substantial product hazard, it may inform the firm that its reporting obligation has been fulfilled. However, a subject firm would be required to report if it later became aware of new information indicating a reportable defect, noncompliance, or risk, whether

the new information related to the same or another consumer product. Unless modified by staff action, the following information, to the extent that it is reasonably available and/or applicable, constitutes a "full report," must be submitted to the staff, and must be supplemented or corrected as new or different information becomes known:

(4) A description of the nature of the defect, failure to comply, or risk. If technical drawings, test results, schematics, diagrams, blueprints, or other graphic depictions are available, attach copies.

(5) The nature of the injury or the possible injury associated with the product defect, failure to comply, or risk.

(6) The manner in which and the date when the information about the defect, noncompliance, or risk (e.g., complaints, reported injuries, quality control testing) was obtained.

(10) An explanation of any changes (e.g., designs, adjustments, and additional parts, quality control, testing) that have been or will be effected to correct the defect, failure to comply, or risk and of the steps that have been or will be taken to prevent similar occurrences in the future together with the timetable for implementing such changes and steps.

(11) Information that has been or will be given to purchasers, including consumers, about the defect, noncompliance, or risk with a description of how this information has been or will be communicated. This shall include copies or drafts of any letters, press releases, warning labels, or other written information that has been or will be given to purchasers, including consumers.

8. Section 1115.14 is amended by revising the first sentence of paragraph (c) and paragraph (e) to read as follows:

§ 1115.14 Time computations.

(c) *Time when obligation to report arises.* The obligation to report under section 15(b) of the CPSA may arise upon receipt by a subject firm of the first information regarding a noncompliance, or a potential hazard presented by a product defect, or an unreasonable risk.

(e) *Time to report.* Immediately, that is, within 24 hours, after a subject firm has obtained information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product

safety rule or voluntary consumer product safety standard, contains a defect which could create a substantial risk of injury to the public, or creates an unreasonable risk of serious injury or death, the firm should report. (See § 1115.13.) If a firm elects to conduct an investigation in order to evaluate the existence of reportable information, the 24-hour period begins when the firm has information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or voluntary consumer product safety standard upon which the Commission has relied under section 9, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. Thus, a firm could report to the Commission before the conclusion of a reasonably expeditious investigation and evaluation if the reportable information becomes known during the course of the investigation. In lieu of the investigation, the firm may report the information immediately.

9. Part 1115 is amended by adding an Appendix to read as follows:

Appendix to Part 1115—Voluntary Standards on Which the Commission Has Relied Under Section 9 of the Consumer Product Safety Act

The following are the voluntary standards on which the Commission has relied under section 9 of the Consumer Product Safety Act:

1. American National Standard for Power Tools—Gasoline-Powered Chain Saws—Safety Regulations, ANSI B175.1-1985 sections 4.9.4, 4.12, 4.15, 7 and 8, or the current version: ANSI B175.1-1991 sections 5.9.4, 5.12, 5.15, 8 and 9.

2. American National Standard for Gas-Fired Room Heaters, Volume II, Unvented Room Heaters, ANSI Z21.11.2-1989 and addenda ANSI Z21.11.2 a and b-1991, sections 1.8, 1.20.9, and 2.9.

Dated: July 29, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-18421 Filed 8-3-92; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1116

Reporting Requirements Under Section 37 of the Consumer Product Safety Act; Final Interpretative Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final interpretative rule.

SUMMARY: The Consumer Product Safety Commission (the "Commission") publishes an interpretative rule advising manufacturers subject to section 37 of the Consumer Product Safety Act (15 U.S.C. 2064) how to comply with the requirement that they report to the Commission certain information relating to settled civil actions and judgments in favor of plaintiffs. Since enactment of this provision of the law in November, 1990, the Commission has received a number of inquiries concerning the procedures for making such reports to the Commission and the Commission's interpretation of various provisions of section 37.

EFFECTIVE DATE: This rule becomes effective on September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Gidding, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207, (301) 504-0626.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed into law the Consumer Product Safety Improvement Act of 1990. In addition to amending several provisions of the existing Consumer Product Safety Act (CPSA), the statute created a new section 37 requiring a manufacturer of a consumer product to report to the Commission if (1) a particular model of the product is the subject of three or more civil actions filed in Federal or state court, (2) each such suit alleges the involvement of the model in death or grievous bodily injury (as defined in section 37(e)(1)), and (3) at least three of the actions result in a final settlement involving the manufacturer or in a judgment for the plaintiff within any one of the two year periods specified in section 37(b). A report must be filed within 30 days after the settlement or judgment in the third such civil action. Each subsequent final settlement or judgment in favor of a plaintiff in a civil action that alleges that the particular model was involved in death or grievous injury and that occurs during the same two year period must also be reported within 30 days after entry of that settlement or judgment.

Section 19(a)(11) of the CPSA (15 U.S.C. 2068(a)(11)) makes it a prohibited act to fail to report as required by section 37. Firms that violate the reporting requirement of section 37 are subject to a civil penalty of up to \$5,000 for each product involved up to a maximum penalty of \$1.25 million for a related series of violations. (15 U.S.C. 2069).

The reporting requirements of section 37 went into effect on January 1, 1991, the day on which the initial two year window for filing reports began. However, to notify the public of how the Commission intends to interpret and implement section 37, on October 28, 1991, the Commission published for public comment a proposed interpretative rule. Several trade associations, firms, individuals and consumer groups submitted comments on the proposed rule. Comments on specific parts of the proposed rule and the Commission's responses are discussed in the following paragraphs.

1. *General Comments:* The reporting requirements of section 37 and the defect reporting obligations imposed by section 15(b) of the CPSA are two of the most important tools the Commission employs to identify and remedy serious product hazards. One principal objective of the enactment of section 37 is to create an "automatic" system for manufacturers to report information concerning settled or adjudicated cases to the Commission without the necessity to perform the types of analyses of potential defects and risks of injury envisioned by section 15(b) of the CPSA, 15 U.S.C. 2064(b). However, analyzing and cataloging lawsuit information under the provisions of the statute often requires interpretation. For example, § 1116.8 of the proposed rule applies a "reasonable person" test to assist manufacturers in determining whether products involved in multiple lawsuits are the same "particular model" for reporting. Similarly, in analyzing whether an injury is "grievous bodily injury" under section 37(e)(1), the terms used in the statute, e.g., severe electric shock, severe burns, disfigurement, debilitating internal disorder, loss of important bodily function, and injuries likely to require extended hospitalization, are susceptible to varying interpretations.

After reviewing the comments, the Commission believes that the proposed rule, as drafted, creates uncertainty about the scope of the reporting obligation, both for manufacturers of products subject to the rule and for the enforcement staff of the Commission. Therefore, to provide clearer guidance as to which settled or litigated lawsuits are reportable under section 37, the Commission has clarified the "reasonable person" test in § 1116.8 of the rule for determining whether products are the same particular model, and is proposing for public comment examples of the types of injury that constitute "grievous bodily injury" in § 1116.2. These revisions are discussed

in the responses to specific comments. The objective of the revisions is to facilitate reporting. This approach will, in turn, enhance the Commission's ability to enforce section 37 when seeking civil penalties for violations of the reporting requirements.

Of particular importance to the Commission's decision to modify the rule are the implications of the section 37 process for the obligation to report under section 15(b) of the CPSA and for the Commission's defect investigation program. One pervasive problem that the Commission has identified in administering section 15(b) is that many manufacturers lack centralized systems to synthesize information about potential product hazards. As a result, information about such hazards is often fragmented and located within a number of areas within a given company, thus detracting from the firm's ability to analyze the section 15 implications of the information. In contrast, to track and catalog product-related lawsuits under section 37, the Commission believes that prudent manufacturers will develop those types of information systems that are currently lacking. As new § 1116.7(h)(4) of the rule recognizes, once those systems are in place, manufacturers will be in a position to perform a two-fold analysis to determine whether the information collected is reportable under either section 15(b) or section 37. A manufacturer might conclude, for example, that differences between products that are the subject of different lawsuits make them different models or that the injuries alleged in one or more of the suits are not grievous. Based on this analysis, the manufacturer might also conclude that the suits are not reportable under section 37. However, a reporting obligation may exist if the same information supports the conclusion that the product(s) contain a defect which could create a substantial product hazard or create an unreasonable risk of death or serious injury.

In view of the foregoing, in its future section 15 defect investigations the Commission intends to explore thoroughly lawsuit data compiled for section 37 reporting purposes and, when appropriate, the reasons for a firm's failure to report, either under section 15(b) or section 37. In addition, the Commission is seeking to expand its access to Federal and state court product liability filings, judgments, and settlements to provide an extrinsic check on compliance with the section 37 reporting requirements. These measures should encourage manufacturers to take

those steps necessary to assure that they are in compliance with the reporting requirements of both sections of the law.

2. *Definitions:* The proposed rule incorporated *verbatim* several definitions contained in section 37, including that of the term "grievous bodily injury". Under section 37(e)(1), a "grievous bodily injury" includes mutilation, amputation, dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorder, severe burn, severe electric shock, and injuries likely to cause extended hospitalization.

a. *Clarification of the Term "Grievous Bodily Injury":* The proposed rule did not undertake to clarify the categories of injury enumerated in section 37(e)(1). However, each of these terms requires some degree of interpretation. For example, amputation could refer to soft tissue damage or to removal of bone or cartilage. The terms "severe burns" and "severe electrical shock" are susceptible to differing interpretations, as are "mutilation," "debilitating internal disorder," and "loss of important bodily functions". The term "disfigurement" raises issues of the extent of injury that must occur to meet the statutory threshold.

Since the ultimate objective of this interpretative rule is to provide manufacturers with clear guidance concerning the reporting requirements, the Commission intends to add to § 1116.2 of the final rule by proposing for public comment examples of the types of injury that fall within the categories enumerated in section 37(e)(1). This proposal is published elsewhere in this issue of the *Federal Register*. Because, however, these examples were not contained in the original proposed rule and thus were not the subject of public comment, the Commission is publishing the definition of "grievous bodily injury" in this final rule unchanged from that which was in the original proposed rule.

b. *Additional Comments:* One commenter suggested that the term "extended hospitalization" provides insufficient guidance to determine whether a particular lawsuit falls within the ambit of reportable lawsuits. The commenter recommended that the Commission specify a minimum 45 day period of in-patient care as "extended hospitalization," exclude from the definition health care provided on an out-patient basis, and place the burden of reporting the length of hospitalization on the plaintiff. The commenter contended that the latter requirement is needed because, absent extensive pre-settlement discovery, information about the nature and length of a plaintiff's

hospitalization would not ordinarily be available to a manufacturer.

The Commission declines to adopt the express recommendations advanced by these commenters. The commenter provided no objective basis for selecting 45 days as the minimum period which would be characteristic of grievous bodily injury. As is discussed in the proposed clarification to § 1116.2(b) of the interpretative rule, information provided by the insurance community, on the other hand, establishes reasonable minimum periods of in-patient care for acute treatment or rehabilitation which the Commission proposes to incorporate in the rule to clarify the definition of grievous bodily injury. The Commission notes that section 37 refers to injuries likely to require extended hospitalization, rather than injuries that actually require such hospitalization. Accordingly, a period of hospitalization much shorter than 30 days may be indicative of grievous bodily injury, if it is followed by prolonged out-patient treatment or rehabilitation therapy.

The suggestion that the burden of reporting the duration of hospitalization be placed on the injured plaintiff is neither authorized by statute nor workable. The statute places the burden of reporting on defendant manufacturers. Given the length of time that normally elapses between an accidental injury and the filing of a lawsuit, and the fact that settlement amounts are typically linked in part to a plaintiff's medical expenses, the Commission believes that a manufacturer will almost always be able to determine the duration of a plaintiff's hospital stay in assessing whether a lawsuit is reportable under section 37. A plaintiff, on the other hand, would not customarily have access to sufficient information about related lawsuits to determine whether or when a section 37 report would be appropriate.

3. *Allegations of Grievous Bodily Injury:* Section 1116.7 of the proposed rule provided that, when the original or amended complaint in a settled or adjudicated action alleges the involvement of a consumer product in death or grievous bodily injury, the lawsuit falls within the scope of section 37. This interpretation was based on section 37(c)(1) which requires that a manufacturer include in a section 37 report a statement as to whether a civil action that was the subject of a report alleged death or grievous bodily injury, and, in the case of an allegation of grievous bodily injury, the category of such injury. This provision itself is evidence of the Congressional intent

that allegations of grievous bodily injury provide the basis for a report, regardless of whether a manufacturer agrees with the plaintiff's characterization of the nature of the injury.

While the Commission received comments supporting the rule as proposed, virtually every industry and trade association commenter objected to the requirement that allegations in complaints be reported. While the commenters advanced a variety of reasons for their objections, the common thread was a belief that plaintiffs often overstate the severity of their injuries. According to these comments, tying reporting to complaint allegations would ultimately require manufacturers to report "nuisance" lawsuits that involve less than grievous injury and that are settled for nominal amounts. To bolster their arguments, several commenters noted that it is common practice in "notice pleading" jurisdictions to use conclusory language in complaints alleging the occurrence of "grievous injury" without specifying the nature of the injury. Other commenters looked to the language of section 37(a) referring to civil actions " * * * for death or grievous bodily injury" as an indication that manufacturers should be permitted to consider the facts that are uncovered during litigation in determining whether a report is warranted.

To remedy this perceived problem, the commenters suggested a variety of options. The majority suggested that the reporting obligation be governed by facts as determined during discovery, rather than by the allegations of the complaint. Others suggested that the Commission adopt a "floor" for monetary damages under which a lawsuit would not be reportable. The estimates of the appropriate level for such a floor ranged between \$2,000 and \$100,000. Still other commenters suggested that a lawsuit not be reportable if the complaint is amended to allege less than grievous bodily injury.

a. *Allegations in Complaints:* Section 37(c)(1) requires that, if a civil lawsuit that is the subject of a section 37 report contains an allegation of grievous injury, the report must include a statement of the category of the alleged injury. Hence, the Commission concludes that a statement in a complaint alleging that a plaintiff has sustained "grievous bodily injury" without any further elaboration does not necessarily bring that lawsuit within the scope of section 37, since such a statement itself does not provide a basis for determining the category into which the injury falls. Accordingly, the Commission has revised § 1116.7 of the

interpretative rule to point out that the proper inquiry should focus on whether the injury claimed by the plaintiff meets the criteria for determining whether an injury constitutes "grievous bodily injury". As the commenters indicated, if the allegations in the complaint in a matter are not sufficiently clear, the process of discovery should routinely provide such information, as would pre-complaint investigation or informal settlement negotiation. The Commission notes, however, that the use of the term "grievous bodily injury" in a complaint raises a strong presumption that the injury claimed by the plaintiff meets the statutory definition.

Many commenters referred to basing reporting decisions on the facts "as determined by discovery". To the extent that this phraseology suggests that a defendant must agree with the plaintiff's characterization of the nature of the injury suffered to incur an obligation to report, the Commission rejects such an interpretation. Section 37(c)(1) clearly contemplates that *allegations* of grievous bodily injury, rather than consensus opinion about the nature and extent of the injury, be reported. Indeed, in the context of settlement, reporting allegations is the only viable alternative, since no adjudication takes place. The Commission recognizes that there may be a rare instance in which a litigated verdict in favor of a plaintiff who alleged the occurrence of grievous bodily injury contains express findings that the injury incurred was less than grievous. In such a case, the actual determination of the nature of the injury by the trier of fact would govern the decision whether the lawsuit was reportable, regardless of the allegations that formed the basis for the complaint.

b. Nuisance Suits; Amended Complaints: The Commission believes that the two measures outlined above—the proposed revisions to § 1116.2(b) of the rule providing examples of the types of injuries embraced in the term "grievous bodily injury," and focusing on plaintiffs' factual allegations of the nature of the injury—will resolve virtually all of the concerns voiced by the commenters. For example, the request that the Commission impose a monetary floor on reportable settlements and judgments derives from the belief that such small monetary amounts are indicative of the occurrence of minor injury. The revised regulation alleviates the need to consider the imposition of such a floor, since the future revisions are designed to winnow out lawsuits in which the categories of injury alleged do not meet the definition of grievous injury. Similarly, the issue of

revising the rule to exclude reports when an amended complaint alleges less than grievous bodily injury becomes superfluous, since, regardless of the reason for the amendment, the actual nature of the injury claimed and its status under section 37 will be the basis for reporting.

In light of the foregoing, the Commission declines to adopt the recommendations of the commenters concerning monetary minimums for reporting and amended complaints. Moreover, the Commission notes that both of these suggestions contain inherent problems which mandate against their inclusion in the final rule. The minimum amounts suggested by the commenters ranged from \$2,000 to \$100,000, with one commenter recommending a variation based on the recovery of 8 percent of the amount of monetary damage claimed. The variation in ranges demonstrates that, unless the monetary amount as a minimum for reporting selected were so small as to be meaningless, any "floor" would, of necessity, capture some lawsuits involving less than grievous injury, and exclude others in which grievous injury occurred. Moreover, the imposition of a minimum dollar amount for reporting purposes could become an artificial standard around which settlement negotiations would revolve. The Commission believes that such a potential regulatory intrusion into the normal course of negotiation is neither appropriate nor in the public interest.

With respect to amendment of complaints to allege less than grievous injury, one possible ramification of revising the rule as the commenters requested could be an insistence on the part of some defendant manufacturers that, as condition of settlement, plaintiffs amend complaints to allege less than grievous bodily injury. The Commission believes that such a result would circumvent the reporting requirements, and would be contrary to the public interest and to the legislative intent of Congress to increase reporting. Therefore, the Commission declines to adopt the proposed revision to the rule.

4. Common Source of Injury; Similar Events or Cause; Particular Model Defect: Section 1116.8(c) of the proposed rule points out that section 37 expressly defines the reporting obligation in terms of the particular model of the product that is the subject of three or more lawsuits rather than the manner in which those products were involved in accidents. The rule therefore states that, as long as the same model is the subject of the requisite number of lawsuits for death or grievous bodily injury within

one of the statutory two year periods, the manufacturer must report, even though the alleged category of injury and the alleged causal relationship of the product to the injury in each suit may differ.

Several commenters objected to this interpretation. They argued that, since the purpose of section 37 is to identify recurrent product defects, requiring the reporting of suits involving different injuries or causes of injury would not promote the objectives of the statute. The commenters suggested a number of more restrictive alternatives, including permitting manufacturers to group lawsuits on the basis of a common source of injury, similar product defects, and/or similar injuries in deciding whether to report.

The Commission declines to adopt any of the alternatives suggested by the commenters. At the outset, the Commission notes that section 37 was enacted to address what Congress perceived as a substantial level of under-reporting under section 15(b) of the CPSA. As the Senate Committee on Commerce, Science, and Transportation noted, "manufacturers are reluctant to indicate that their products may contain a defect, or do not believe their products are defective, and so often do not supply the CPSC with notice under the law." S. Rep. No. 37, 101st Cong., 1st Sess. 10 (1989). By making the section 37 reporting obligation automatic, Congress sought to eliminate the disincentives to reporting associated with the section 15 process of discretionary defect and causation analysis. In view of this statutory objective and the express wording of section 37, the Commission believes that the interpretation in the proposed rule implements both the letter and intent of the law. In contrast, two of the alternatives suggested by the commenters create precisely the same problems that the legislation seeks to avoid, especially in the case of settled lawsuits. Screening cases for section 37 purposes to determine whether a manufacturer agrees that each involves the same defect or causal elements would be essentially the same process that section 15(b) contemplates, albeit drawing on a much narrower data base than the typical section 15 analysis uses. In the absence of a formal adjudication, such a process would invite a manufacturer to draw distinctions between cases based on its litigation position in each case rather than on the statutory criteria established by Congress relating to the determination of whether the suits involve the same particular model of a product.

Grouping suits on the basis of the similarity of injuries is an equally flawed approach. A mechanical hazard associated with a specific product, for example, could result in mutilation, amputation, or disfigurement, depending on the circumstances of the incidents in which the product is involved. An electrical hazard in the same product can often manifest itself as either fire or shock, while a caustic chemical hazard could be characterized as causing severe burns or disfigurement. As a result, grouping lawsuits by similar categories of injury could exclude from the ambit of section 37 lawsuits involving the same product defect. The Commission therefore declines to modify the proposed rule in the manner suggested by the commenter.

5. Components of Consumer Products: Section 1116.8(b) of the proposed rule notes that, because the definition of the term "consumer product" contained in section 3(a) of the CPSA expressly includes components of such products, the reporting obligations of section 37 apply to component manufacturers. As long as the same particular model of a component is involved in three lawsuits that meet the criteria of section 37, the component manufacturer who is a party to those suits must report, even though the products into which the components are incorporated are different models or even product types. The same proposition applies when the category of the alleged injuries or the alleged causal relationship of the component to the injuries are different in one or more of the three lawsuits. The component manufacturer must still report under section 37.

A number of commenters contended that these requirements are unduly burdensome because components used in a variety of different products would be subject to the reporting requirements, even though the end-use products in which they were incorporated would not. Most of these commenters suggested that the Commission limit the obligation of component manufacturers to report to lawsuits involving the same particular model of the finished product into which the component was incorporated. Some, however, suggested permitting component manufacturers to differentiate between lawsuits involving different classes of products in analyzing their reporting obligations. Other commenters argued that, because lawsuits naming component manufacturers may be based on different types of injuries and/or causal scenarios, requiring reports of such lawsuits would not yield any benefit to the Commission's defect identification

program. These commenters recommended revising the rule to require component manufacturers to report only when all three lawsuits involve the same category of injury or the same causal involvement of the component in the injuries.

The Commission declines to adopt the modifications to the rule recommended by the commenters. At the outset, a plain reading of the language of section 37(a) indicates that the law itself bases reporting solely on whether the same particular model of a product is involved in three or more lawsuits alleging death or grievous bodily injury. Given the express language of the statute and the legislative purpose to increase reporting, the Commission believes that adopting the suggestions of the commenters would inappropriately narrow the reporting obligation.

With respect to the merits of the commenters' various arguments, the Commission has experienced many cases in which the same defective components have given rise to substantial risks of injury involving multiple product models and product types. Sometimes, the defect in such components has manifested itself in the form of different types of injury. Modifying the rule as suggested would deprive the Commission of information required to identify and analyze such widespread hazards. With respect to issues of causation, the Commission believes that the discussion of this issue above is equally applicable to components.

In response to those comments that indicate that the proposed rule imposes a disparate burden on component manufacturers, the Commission notes that the rule places no greater or lesser obligation on such manufacturers than that which manufacturers of finished products will experience under the statute itself. Both classes have to track lawsuits to which they are parties. Both have to analyze lawsuit information to determine whether it is reportable. Indeed, by focusing only on whether the same particular model of a product is involved in lawsuits for death or grievous bodily injury, the proposed rule imposes less of an analytical burden than the alternatives suggested by the commenters. Moreover, given the ability of component defects to cause hazards ranging over a wide variety of products, the Commission believes that those provisions of the interpretative rule dealing with components are consistent with the public interest.

6. Consumer Products Involved in Occupational Injuries: Section 1116.7(f)(2) of the proposed rule notes

that, since section 37 focuses on consumer products, it is the responsibility of the manufacturer of a product implicated in a civil action to determine whether the production or distribution of the product satisfies the statutory criteria of section 3(a) of the CPSA, 15 U.S.C. 2051(a), for determining whether a product is a consumer product. If the product involved in the lawsuit meets the definition, it falls within the scope of section 37, even though the injury may have occurred during use of the product during employment.

Three commenters objected to this provision of the rule, contending that only lawsuits brought by injured consumers should be subject to the section 37 reporting requirements. One hypothesized that injuries occurring during employment might be different from those arising during consumer use. Another erroneously characterized the provision as extending the Commission's oversight into the industrial area in excess of its regulatory authority.

a. Occupational Injuries: With one exception relating to asbestos litigation (discussed below), the Commission declines to limit the scope of section 37 to lawsuits involving consumer injury. In defining the scope of the Commission's authority, Congress recognized the risks associated with consumer exposure to industrial products. As the House Committee report on the original Consumer Product Safety Act notes: "If a manufacturer or distributor of an industrial product fosters or facilitates its sale to or use by consumers, the product may lose its claim for exclusion (from the definition of 'consumer product') if a significant number of consumers are thereby exposed to hazards associated with the product." Report of the House Committee on Interstate and Foreign Commerce, H.R. Rep. No. 1153, 92d Cong., 2d Sess. 27 (1972). The Commission's experience confirms that, when a product is produced or distributed for both consumer and occupational use with sufficient frequency to make it a "consumer product," product-related injuries that happen to either group are often indicative of those that can be expected to occur to the other. Accordingly, the Commission believes that the focus of the rule on whether the product involved in an injury was a consumer product, rather than on whether the victim was a consumer, is consistent with the letter and the intent of sections 3(a) and 37 of the CPSA, and is an appropriate vehicle to assess potential hazards to consumers. The

Commission also notes that, should a section 37 report based in whole or in part on lawsuits involving occupational injuries indicate that some form of action is required to correct a product hazard, that action would be limited to the remedies the CPSA prescribes to deal with the hazards to the public associated with consumer products.

b. Asbestos Litigation: The Commission received one comment on the proposed rule that suggests narrowing this interpretation to accommodate the unique circumstances surrounding asbestos litigation. The commenter, a not-for-profit corporation representing 19 member companies in asbestos personal injury litigation, noted that its members are defendants in approximately 80,000 pending court cases. In view of the number of cases, the passage of time between exposure and injury, and the difficulty associated in determining the nature or identity of the products involved in the injury, the commenter contended that the proposed rule would place a substantial burden on the asbestos industry to analyze and catalog lawsuit information for section 37 purposes. The commenter also argued that such an effort is unlikely to produce any information useful to the Commission because, in the vast majority of lawsuits, the products in question have already been banned by either the Commission or by the Environmental Protection Agency, thus alleviating the need for additional regulatory action.

The occurrence of asbestos-related injury is directly tied to the nature of the products involved, the levels of airborne asbestos encountered, and the duration of exposure to those levels. In the case of injury arising from complete or partial occupational exposure to asbestos, the levels of asbestos involved in the injuries and the duration of exposure almost always will be substantially higher and longer than those which would be encountered during consumer use, even if the products involved were technically consumer products. Hence, reporting information on lawsuits involving these types of exposure will be of limited value to assist the Commission in its analysis of remedial measures that could adequately reduce risks to consumers associated with specific product models. Moreover, the extended latency period between exposure to asbestos and the occurrence of injury severely hampers the ability of the Commission to take action against a model implicated in such injuries.

The Commission acknowledges that, in general lawsuits arising from death or grievous injury caused by exposure to

asbestos-containing consumer products technically fall within the scope of section 37. However, given the unique circumstances associated with asbestos litigation and the burden of complying with section 37, the Commission believes that Congress may not have intended the statute to sweep so broadly, especially in those cases in which the levels of asbestos and duration of exposure are not characteristic of the levels and durations consumers would experience as a result of the purchase of a product for personal use. Accordingly, as a matter of agency discretion, the Commission has revised § 1116.7(f)(2) of the proposed rule to require manufacturers of asbestos-containing products to report only those lawsuits that allege the occurrence of death or grievous bodily injury to consumers as a result of exposure to asbestos from a particular model of a consumer product purchased for the personal use of a consumer.

The Commission notes that it will consider requests for exemption from the lawsuit reporting requirements for other products that present chronic hazards similar to the hazard presented by asbestos. However, any such request should be fully documented and establish that compliance with the reporting requirements would be unduly burdensome and unlikely to provide information which would assist the Commission in discharging its obligations under the statutes it administers.

7. Particular Model of a Consumer Product: Section 37 ties the reporting obligation to lawsuits involving the same particular model of consumer product. Section 37(e) (2) defines a particular model as "one that is distinctive in functional design, construction, warnings, or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance." 15 U.S.C. 2084(e)(2). Section 1116.8 of the proposed rule established a "reasonable person" test to determine whether a product that is the subject of an adjudicated or settled lawsuit is sufficiently different from other similar products in one or more of the factors listed in section 37(e)(2) to be regarded as a "particular model" under section 37. Under this test, a product would be considered a different particular model if, after an analysis of information relating to those statutory factors, a reasonable person would conclude that the difference between that product and other items of the same product class

manufactured or imported by the same manufacturer is substantial and material. The test recognized that the difference between products in one factor alone could be sufficient to make them different particular models. The proposed rule did not, however, specify whether the application of the "reasonable person" test relies on the perspective of a consumer purchaser or on that of the manufacturer.

a. The "reasonable person" test: The "reasonable person" test elicited several disparate comments. Two commenters suggested that the statute is sufficiently clear to provide adequate guidance to manufacturers without further clarification and contended that imposition of the "reasonable person" test would exceed the Commission's statutory authority. Another group took the position that, even with the addition of the "reasonable person" standard, the rule provided insufficient guidance for manufacturers to determine their obligations under the law. Still others supported the test, although one commenter observed that the Commission should not second guess a manufacturer's good faith judgment as to whether a product was a "particular model" based on the application of the statutory factors in section 37. Two commenters focused on the definition of "particular model," rather than on the test, requesting that the Commission revise the definition to recognize that differences in features, components, or wiring that could have a direct effect on consumer safety could afford a basis for distinguishing between products. Another requested that the rule refer to a product's size, dimensions, or special features as providing such a basis.

At the outset, under sections 20(d) and 19(a)(11) of the CPSA, a "knowing" violation of section 37 can arise as a result of the knowledge presumed to be had by a reasonable person acting in the circumstances. The latter clause indicates a Congressional intent that, in determining whether civil penalties should be assessed for a failure to report under section 37, the conduct of a manufacturer should be reviewed in light of the conduct that would be expected of a reasonable manufacturer of similar products possessing the same degree of or ability to obtain knowledge about the products at issue. Hence, the application of the "reasonable person" test in the rule focuses on how a representative manufacturer of a given commodity would reasonably view the distinctions between products in that commodity class. In determining whether to seek civil penalties, the Commission intends to review conduct

of manufacturers in light of this standard.

b. Application of the "reasonable person" test: The Commission recognizes that a variety of evidentiary aids exist to assist manufacturers in evaluating whether a specific product is distinctive in one or more of the statutory factors. The proposed rule noted that information relevant to this determination includes the manufacturer's description of the features and uses of the product in question in instruction manuals, descriptive brochures, or marketing or promotional programs. The rule also noted that the differences or similarities between products in their observable physical characteristics and in components that are not readily observable and that are incorporated into those products for safety related purposes should also be analyzed. Other evidence might include expert evaluation or surveys of consumer users or a manufacturer's retail customers.

While all of these sources of information can be of value in evaluating products, the Commission also recognizes that, as a practical matter, conducting surveys or the solicitation of expert opinion can be onerous, especially for manufacturers with multiple product lines. By the same token, many industries, in accordance with long-standing commercial practices, memorialize model designations in documents such as promotional literature, catalogs, specification sheets, and product drawings. These documentary designations provide a reference point for applying the statutory criteria to determine whether a product listed or described therein is a different model from other listed products. The Commission believes that documentary evidence, in most instances, can have substantial probative value for model determinations, especially when product distinctions have been consistently described in such documents for a long period of time. Accordingly, the Commission believes that a manufacturer's inquiry should focus, in the first instance, on descriptions of product characteristics and uses contained in the types of literature and documents described above. The fact that two products are listed as different models or have separate descriptions in literature is not necessarily sufficient to support a determination that they are different models. Rather, the information in such literature must be evaluated in light of the factors identified in section 37 for analyzing models. If a manufacturer reasonably concludes,

based on an analysis of information contained in documentary material, that the difference between two products in one or more of the enumerated factors is substantial and material, the products would be different models for reporting purposes.

The Commission notes, however, that a manufacturer's analysis of documentary material should take into account the customary practices of the trade of which the manufacturer is a member. For example, if an industry customarily engages in pre-market testing or certification of products by independent testing organizations, a number of products may be included under one certification report based on identical tests and evaluations. To the extent that those tests and evaluations focus on the factors enumerated in section 37 for model determination, inclusion of multiple products in one report may raise a strong presumption that the features of the products identified in the report are not regarded within the trade as being distinctive, notwithstanding the fact that each of the products may be designated as separate models in the manufacturer's literature. The latter point is especially relevant in those instances in which the only material difference between products is in size of calibration. While such product characteristics are relevant to the analysis, for example, of the functional design of two or more otherwise identical products, grouping such products under one listing or testing report tends to negate any conclusion that each product is a different particular model. The Commission has revised § 1116.8(a) of the proposed rule to reflect the changes discussed above.

c. Response to Specific Comments: Some commenters suggested that the difference in price between products should be given substantial weight in determining whether they are different models. To the extent that the prices of products reflect the types of differences enumerated in section 37(e)(2), a substantial difference in price between two or more products may be evidence that the products are distinctive from one another and thus are different particular models. However, price variations to accommodate different markets or vendors are not sufficient to draw such a distinction.

The Commission declines to adopt specific revisions to the proposed rule that would enumerate features, components, or wiring differences which could affect a product's safety related performance as a basis for distinguishing between products. The

Commission also declines to specify that size, product dimensions, and special features also form the basis for such distinctions. Section 37 requires a manufacturer of products that are the subject of settled or adjudicated lawsuits to conduct a case-by-case analysis to determine whether the products involved in the suits are the same particular models. Whether any of the factors identified by the commenters provides a basis for making such a distinction depends on the nature of the product, its uses, and the customs of members of the trade which produce the product. While these factors might provide the requisite foundation to conclude reasonably that certain types of products are different models, the converse may be true for other products. The Commission therefore declines to modify the proposed rule in the manner suggested by the commenters.

The Commission cautions that section 37 centers on the distinctiveness of products that are the subject of lawsuits. A component part that is the subject of a lawsuit, for example, may be significantly different and thus a different "particular model" when compared to another part of the same type or class that is also the subject of a suit. However, such different components may be incorporated in the same model of a finished product that is the subject of multiple lawsuits. In such a case, the differences in the components may be insufficient to permit a manufacturer to draw distinctions between the finished products that are the subjects of the lawsuits. Hence, an analysis of a product in terms of size, special features, or components should focus on whether the differences between such elements are sufficiently great to cause a reasonable manufacturer to regard the finished products into which they are incorporated as different models. Therefore, § 1116.8(a)(7) of the final rule notes that the use of component parts that are interchangeable or that perform substantially the same function as comparable components in other units does not afford the basis for distinguishing between models of the products into which they are incorporated.

8. Confidentiality: Congress enacted section 37, it also enacted section 6(e) of the CPSA, 15 U.S.C. 2055(e), to impose stringent confidentiality requirements for information required to be submitted under section 37. With two exceptions related to disclosure of such information to specific Congressional committees and to the authentication of a section 37 report for the manufacturer who

submitted it, members of the Commission and officers and employees of both the Commission and the Department of Justice are barred from disclosing such information. By the express terms of law, however, the section 6(e) prohibition applies only to the information a manufacturer is required to submit under section 37(c)(1) and to statements provided under section 37(c)(2)(A) relating to the possibility or the existence of an appeal from a judgment adverse to the reporting manufacturer. Although section 37(c)(2)(B) expressly provides a reporting manufacturer with the opportunity to provide voluntarily additional information, the section 6(e) restrictions on disclosure do not reference such additional information.

In view of the structure of the statute, § 1116.9(b) of the proposed rule notes that the disclosure of such additional information is governed, not by section 6(e), but by sections 6(a) and (b) of the CPSA, 15 U.S.C. 2055 (a) and (b). The former prohibits the disclosure of trade secret information. The latter requires the Commission to take reasonable steps, prior to the public disclosure of information about a product from which the identity of the manufacturer of the product can be readily ascertained, to assure that the information is accurate and that the disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts the Commission administers.

(a) *Additional Information Submitted Under Section 37(c)(2)(B)*: Two commenters expressed concern that the confidentiality requirements of the proposed rule did not apply to additional information submitted by a reporting manufacturer, either of its own volition or in response to a request for supplemental information from the Commission. One argued that, since section 6(e) protects information that Congress compels manufacturers to provide to the Commission, the submission of additional information in response to a request by the Commission should be treated as a compulsory disclosure and thus afforded the same degree of confidentiality as a section 37 report. The second expressed concern that the absence of protection for information voluntarily furnished under section 37(c)(2)(B) could have a chilling effect on the willingness of manufacturers to provide such information and would unfairly penalize those who choose to do so.

The Commission believes that the public interest is best served by encouraging manufacturers to make available all information required to

assess potential hazards associated with specific products. Hence, the agency believes generally that maintaining the confidentiality of such information can further this objective. By the same token, however, the Commission's ability to withhold documents from public disclosure is constrained by the provisions of the statutes it administers and the Freedom of Information Act, 5 U.S.C. 552. Given the manner in which sections 37(c) and 6(e) of the CPSA are drafted, the Commission believes that little latitude exists to extend the penumbra of section 6(e) to additional information submitted voluntarily to the Commission either in response to a request by the agency or at the manufacturer's initiative. Interpretative regulations issued under section 6(b) of the Act, however, establish that disclosure of certain information may be barred if the disclosure would not be fair in the circumstances. 16 CFR 1101.33. As an example, the regulation states that the Commission will generally not disclose information furnished by a firm to facilitate prompt remedial action or settlement when the firm has a reasonable expectation that the Commission will maintain the information in confidence. 16 CFR 1101.33(b)(1).

The Commission believes that, given the gravity with which Congress viewed the disclosure of section 37 reports, issues of releasing additional information submitted pursuant to section 37 should be evaluated under the fairness provisions of section 6(b). Accordingly, should the Commission receive a request for such information or contemplate disclosure on its own initiative, the manufacturer will be given an opportunity to present arguments to the Commission why the information should not be disclosed, including, if appropriate, why disclosure of the information would be unfair in the circumstances. Among the factors the Commission will consider are the nature of the information, the fact that it is an adjunct to a Congressionally protected report, and whether the information in question supports the conclusion that a section 37 or 15(b), CPSA, report should have been filed earlier.

b. *Additional Comments on Confidentiality*: One commenter requested that the proposed rule be revised to point out explicitly that information obtained by the Commission independently of a section 37 report, e.g. from a third party source, does not enjoy the confidentiality protections of section 6(e). The Commission agrees with this comment

and has amended the rule accordingly. See § 1116.9(c).

Another commenter objected generally that the statutory confidentiality requirements are inadequate, based on its erroneous belief that a section 37 report would be discoverable in private litigation, even though the Commission could not disclose it. In addition to the restrictions imposed on disclosure by the Commission, section 6(e)(2) provides that a report furnished under section 37(c)(1) or (c)(2)(A) shall be immune from legal process and shall not be subject to subpoena or discovery in any civil action in a State or Federal court or in any administrative proceeding. The only exception to these restrictions relates to actions seeking civil or criminal penalties or injunctive relief for violating section 19(a)(11) of the CPSA by failing to provide the information required by section 37. Hence, section 6(e) directly addresses the concerns expressed by this commenter.

A third commenter exhorted the Commission to develop strict procedures to maintain the confidentiality of section 37 reports so that they are not erroneously disclosed. The same commenter urged the Commission to review Congressional requests for section 37 reports to determine that they are from the chairman or the ranking minority member of one of the Committees referenced in section 6(e) and that they are for the use of those members. The commenter also requested that the Commission remind Congressional recipients that the information is confidential and should not be further disseminated, even to the other members or staff of those Committees.

The Commission has in place standard internal operating procedures to maintain the confidentiality both of trade secret information and of information submitted pursuant to section 37. Moreover, the Commission routinely apprises Congressional Committees authorized by statute to obtain specific information from the Commission of any statutory restrictions on further dissemination of that information. The concerns voiced by the commenter have therefore already been resolved. However, the Commission notes that, if it receives a Congressional request for a copy of a section 37 report that complies with the requirements of section 6(e)(4), it has no discretion to review or deny the request.

9. Miscellaneous Comments:

a. *Multiple Incidents*: One commenter suggested that the Commission clarify the rule to note that section 37 requires

reports of three civil actions only if each suit arises from a different incident. The commenter correctly noted that one incident alone could give rise to multiple lawsuits, but contended that the threshold requirement that three suits be settled or adjudicated for the reporting obligation to arise was intended to identify multiple occurrences which could identify a pattern of injury. A second commenter recommended that a class action lawsuit or any single action involving three or more people injured in three or more incidents involving a particular model of a product should not count as just one action for reporting purposes.

The Commission believes that the Congressional intent behind section 37 is to capture multiple incidents involving death or grievous bodily injury. The Commission has therefore revised § 1116.3 of the proposed rule to reflect this Congressional purpose. A multiple plaintiff law suit for grievous bodily injury or death is reportable if the suit involves three or more separate incidents. The reporting obligation arises when at least three plaintiffs have settled their claims or when a combination of settled claims and adjudications favorable to plaintiffs reaches three. Multiple lawsuits arising from one incident only count as one lawsuit for the purposes of section 37.

b. Partial Judgments: Section 1116.7(e) of the proposed rule points out that a plaintiff need not prevail completely for a litigated case to come within the scope of section 37. One commenter argued that, in comparative fault jurisdictions in which a plaintiff's award is reduced by the percentage of his or her fault, only those lawsuits in which a manufacturer is found to be more than 50% at fault should be reportable. The commenter took the position that a verdict in which the plaintiff is assigned more than half the fault is not a verdict in the plaintiff's favor.

The Commission declines to adopt this suggestion. In the Commission's view, a judgment awarding partial monetary compensation to an injured party is a judgment in favor of that party under the plain language of section 37.

c. Multiple Reporting Periods: One commenter contended that, under the clear language of section 37, manufacturers are only required to report if a particular model of a consumer product is the subject of civil actions that result in judgment or settlements in favor of the plaintiffs in each of three 24 month periods. Inasmuch as section 37(b), which defines the 24 month period(s) for reporting, establishes a continuing series of 24 month periods and contains no

reference to the number three, the Commission believes that the commenter has misread the statute. If the commenter is suggesting that three reportable lawsuits must arise in every 24 month period for the reporting obligation to arise, the obligation would never attach, since every two years would initiate a new period. Such a result is obviously flatly inconsistent with the purposes of section 37.

d. Multiple Penalties: The knowing failure to report under either section 15(b) or section 37 is a violation of section 19 of the CPSA that can give rise to the imposition of civil penalties under section 20 of the Act. Recognizing that such cases are a subject for individual consideration based on the facts adduced in each, the proposed rule did not address the issue of whether the penalties could be imposed for violations of both sections of the Act relating to the same product. One commenter, however, argued that section 20 of the CPSA prohibits the multiple assessments of penalties for violating different provisions of section 19.

This comment is beyond the scope of the interpretative rule. Inasmuch as this issue is more appropriately resolved in the context of an enforcement action, no addition or revision to the rule is necessary.

e. Violations of section 15(b): Two commenters requested that the Commission revise section 1116.12 of the proposed rule to note expressly that the Commission will, as a general rule, investigate a section 37 report that has not been preceded by a section 15(b) report to determine whether the reporting manufacturer has violated section 15(b). The commenters believed that including such a statement will create an incentive for firms not to be dilatory in reporting, relying on the mistaken belief that a report under section 37 will absolve them of liability for the failure to report under section 15(b). The commenters also requested a revision to § 1116.6(b)(2) to encourage reporting manufacturers to submit voluntarily explanations why they have not submitted section 15(b) reports in advance of their section 37 reports. Section 1116.6(b)(2) identifies optional information a manufacturer may include with a section 37 report.

The Commission believes that it is in the public interest to include a statement in the rule alerting manufacturers that the Commission intends, in appropriate cases, to investigate whether a manufacturer reporting under section 37 has committed a knowing violation of section 15(b). However, the Commission

receives many section 37 reports involving either products that are already the subject of some form of remedial action, product-related injuries already known to the Commission, or injuries that occur in the normal course of human interaction with products. Such cases require no further investigation. The revisions to § 1116.12 of the rule therefore stop short of establishing a general policy that all section 37 reports will be the subject of investigation for timely reporting under section 15(b). The Commission has, as requested, also revised § 1116.6(b)(2) of the rule to encourage manufacturers, when appropriate, to include voluntarily in their section 37 reports explanations why section 15(b) reports have not previously been filed.

f. Double Reporting: One commenter proposed that the rule be modified to specify that a section 37 report not be required when the manufacturer has already reported the same information under section 15(b). The commenter stated that such an action would reduce the reporting burden on manufacturers while providing the Commission with the information it needs. As stated before, the Commission believes that the primary burden associated with section 37 is the establishment and maintenance of information systems to capture and analyze lawsuit information, rather than the act of reporting. Accordingly, adopting the recommended revisions would do little to alleviate that burden. Moreover, information relating to lawsuits or other incidents discovered after a section 15 report has been filed often illuminates issues such as the scope of a product defect, the role human factors play in a specific type of accident, and the effectiveness of a corrective action plan, if one is in place. The Commission therefore declines to adopt a blanket policy of the type proposed by the commenter. The Commission recognizes, however, that there may be specific cases in which such additional reporting will be superfluous. Manufacturers who believe this is the case may raise the issue with the Commission's enforcement staff after the manufacturer's section 15 case is formally closed.

g. Alleged Inconsistency Between Sections 15(b) and 37: One commenter reasoned that the section 15(b) requirement to report non-compliance with a voluntary safety standard upon which the Commission has relied is, in effect, an order by the Commission to comply with that standard. The commenter then argued that, when taken in conjunction with section 37, this requirement creates the anomaly

that a manufacturer of a product that complied with the voluntary standard would have to report the complying product as "dangerous or unsafe based on lawsuit allegations." The Commission disagrees with the commenter's characterizations. The section 15(b) reporting requirement places no formal obligation on a manufacturer to comply with a voluntary standard upon which the Commission has relied. A report of non-conformity permits the Commission to assess the effectiveness of its reliance on such a standard, as well as the degree of compliance within the affected industry, and could, for example, warrant no remedial action or could only be the prelude to reopening a prospective rulemaking proceeding. Moreover, section 37 contains no requirement that a manufacturer designate the product that is the subject of a section 37 report as unsafe or dangerous. Indeed, in enacting section 37, Congress recognized that requiring firms to make such value judgments creates a deterrent to reporting. Hence, section 37 requires only the reporting of information concerning lawsuits without any such analysis.

h. The Commission has included minor technical revisions in the text of the final rule. In response to inquiries from manufacturers, the rule now contains § 1116.3(c) which notes that a law suit that otherwise meets the criteria of section 37(a) is reportable (1) if the manufacturer of the product named in the action is a party to the suit, or (2) if not a party, is involved in the defense of the action or has notice of the suit prior to the entry of a final order, and discharges any obligation owed to the plaintiff under the settlement of or in satisfaction of the judgment in the action. The manufacturer need not discharge such an obligation itself for a suit to be reportable. The suit is also reportable if, for example, the manufacturer's insurer, agent, or parent company satisfies the obligation. The rule also contains, in § 1116.6(b)(2), a statement that manufacturers may voluntarily report the dates on which final orders were entered in the lawsuits that are the subject of a section 37 report. Such information will assist the Commission staff in deciding whether to conduct additional investigation of a reported matter. The Commission has also inserted a heading in the rule, "Section 1116.7 Scope of section 37 and its relationship to section 15(b) of the CPSA", which was inadvertently omitted when the Federal Register

notice containing the proposed rule was printed.

Regulatory Flexibility Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. Section 37 implements Congress's concern and intention to enhance the Commission's ability to detect and remedy serious product hazards. This final interpretative regulation simply clarifies the obligations imposed by the law on manufacturers of consumer products that are the subject of civil lawsuits. The final regulation, however, will have no economic impact on small business, either beneficial or negative, beyond that which results from the statutory provisions.

Environmental Considerations

The final rule below does not fall within any of the categories of Commission activities described in 16 CFR 1021.5(b) which have the potential for producing environmental effects, and which, therefore, require environmental assessments, and, in some cases, environmental impact statements. The Commission does not believe that the final rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstances in which the rule promulgated below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1116

Administrative practice and procedure, Business and industry, Confidential business information, Consumer protection, Reporting and recordkeeping requirements.

Conclusion

Therefore, in accordance with the provisions of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2052 *et seq.*, the Commission amends title 16, chapter II, of the Code of Federal Regulations by adding to subchapter B a new part 1116, to read as follows:

PART 1116—REPORTS SUBMITTED PURSUANT TO SECTION 37 OF THE CONSUMER PRODUCT SAFETY ACT

Sec.

1116.1 Purpose.

1116.2 Definitions.

Sec.

1116.3 Persons who must report under section 37.

1116.4 Where to report.

1116.5 When must a report be made.

1116.6 Contents of section 37 reports.

1116.7 Scope of section 37 and its relationship to section 15(b) of the CPSA.

1116.8 Determination of particular model.

1116.9 Confidentiality of reports.

1116.10 Restrictions on use of reports.

1116.11 Reports of civil actions under section 37 not admissions.

1116.12 Commission response to section 37 reports.

Authority: 15 U.S.C. 2055(e), 2064.

§ 1116.1 Purpose.

The purpose of this part 1116 is to establish procedures for filing with the Consumer Product Safety Commission ("the Commission") reports required by section 37 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2064) and to set forth the Commission's interpretation of the provisions of section 37.

§ 1116.2 Definitions.

(a) A 24-month period(s) means the 24-month period beginning on January 1, 1991, and each subsequent 24-month period beginning on January 1 of the calendar year that is two years following the beginning of the previous 24-month period. The first statutory two year period ends on December 31, 1992. The second begins on January 1, 1993 and ends on December 31, 1994, and so forth.

(b) *Grievous bodily injury* includes any of the following categories of injury:

- (1) Mutilation;
- (2) Amputation;
- (3) Dismemberment;
- (4) Disfigurement;
- (5) Loss of important bodily functions;
- (6) Debilitating internal disorder;
- (7) Severe burn;
- (8) Severe electric shock; and
- (9) Injuries likely to require extended hospitalization.

(c) A *particular model* of a consumer product is one that is distinctive in functional design, construction, warnings or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance. (15 U.S.C. 2064(e)(2))

(1) The *functional design* of a product refers to those design features that directly affect the ability of the product to perform its intended use or purpose.

(2) The *construction* of a product refers to its finished assembly or fabrication, its materials, and its components.

(3) *Warnings or instructions related to safety* include statements of the

principal hazards associated with a product, and statements of precautionary or affirmative measures to take during the use, handling, or storage of a product, to the extent that a reasonable person would understand such statements to be related to the safety of the product. Warnings or instructions may be written or graphically depicted and may be attached to the product or appear on the product itself, in operating manuals, or in other literature that accompanies or describes the product.

(4) The *function* of a product refers to its intended use or purpose.

(5) *User population* refers to the group or class of people by whom a product is principally used. While the manufacturer's stated intent may be relevant to an inquiry concerning the nature of the user population, the method of distribution, the availability of the product to the public and to specific groups, and the identity of purchasers or users of the product should be considered.

(6) *Other characteristics which could affect a product's safety related performance* include safety features incorporated into the product to protect against foreseeable risks that might arise during the use, handling, or storage of a product.

(d) The term *manufacturer* means any person who manufactures or imports a consumer product. (15 U.S.C. 2052(a)(4)).

§ 1116.3. Persons who must report under section 37.

A manufacturer of a consumer product must report if:

(a) A particular model of the product is the subject of at least 3 civil actions filed in Federal or State Court;

(b) Each suit alleges the involvement of that particular model in death or grievous bodily injury;

(c) The manufacturer is—

(1) A party to, or
(2) Is involved in the defense of or has notice of each action prior to entry of a final order, and is involved in the discharge of any obligation owed to plaintiff under the settlement of or in satisfaction of the judgment after adjudication in each of the suits; and

(d) During one of the 24-month periods defined in § 1116.2(a), each of the three actions results in either a final settlement involving the manufacturer or in a court judgment in favor of the plaintiff.

For reporting purposes, a multiple plaintiff suit for death or grievous bodily injury is reportable if the suit involves three or more separate incidents of injury. The reporting obligation arises when at least three plaintiffs have

settled their claims or when a combination of settled claims and adjudications favorable to plaintiffs reaches three. Multiple lawsuits arising from one incident involving the same product only count as one lawsuit for the purposes of section 37.

§ 1116.4 Where to report.

Reports must be sent in writing to the Commission's Office of Compliance and Enforcement, Division of Corrective Actions, Washington, DC 20207, telephone (301) 504-0608.

§ 1116.5 When must a report be made.

(a) A manufacturer must report to the Commission within 30 days after the final settlement or court judgment in the last of the three civil actions referenced in § 1116.3.

(b) If a manufacturer has filed a section 37 report within one of the 24-month periods defined in § 1116.2(a), the manufacturer must also report the information required by section 37(c)(1) for any subsequent settlement or judgment in a civil action that alleges that the same particular model of the product was involved in death or grievous bodily injury and that takes place during the same 24-month period. Each such supplemental report must be filed within 30 days of the settlement or final judgment in the reportable civil action.

§ 1116.6 Contents of section 37 reports.

(a) *Required information.* With respect to each of the civil actions that is the subject of a report under section 37, the report must contain the following information:

(1) The name and address of the manufacturer of the product that was the subject of each civil action;

(2) The model and model number or designation of the consumer product subject to each action;

(3) A statement as to whether the civil action alleged death or grievous bodily injury, and, in the case of an allegation of grievous bodily injury, a statement of the category of such injury;

(4) A statement as to whether the civil action resulted in a final settlement or a judgment in favor of the plaintiff; and

(5) In the case of a judgment in favor of the plaintiff, the name of the civil action, the number assigned to the civil action, and the court in which the civil action was filed.

(b) *Optional information.* A manufacturer furnishing a report may include:

(1) A statement as to whether any judgment in favor of the plaintiff is under appeal or is expected to be

appealed (section 15 U.S.C. 2084(c)(2)(A));

(2) Any other information that the manufacturer chooses to provide (15 U.S.C. 2084(c)(2)(B)), including the dates on which final orders were entered in the reported lawsuits, and, where appropriate, an explanation why the manufacturer has not previously filed a report under section 15(b) of the CPSA covering the same particular product model that is the subject of the section 37 report; and

(3) A specific denial that the information it submits reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury.

(c) *Statement of amount not required.* A manufacturer submitting a section 37 report is not required by section 37 or any other provision of the Consumer Product Safety Act to provide a statement of any amount paid in final settlement of any civil action that is the subject of the report.

(d) *Admission of liability not required.* A manufacturer reporting to the Commission under section 37 need not admit that the information it reports supports the conclusion that its consumer product caused a death or grievous bodily injury.

§ 1116.7 Scope of section 37 and its relationship to section 15(b) of the CPSA.

(a) According to the legislative history of the Consumer Product Safety Improvement Act of 1990, the purpose of section 37 is to increase the reporting of information to the Commission that will assist it in carrying out its responsibilities.

(b) Section 37(c)(1) requires a manufacturer or importer (hereinafter "manufacturer") to include in a section 37 report a statement as to whether a civil action that is the subject of the report alleged death or grievous bodily injury. Furthermore, under section 37(c)(2), a manufacturer may specifically deny that the information it submits pursuant to section 37 reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury, and may also include any additional information that it chooses to provide. In view of the foregoing, the reporting obligation is not limited to those cases in which a product has been adjudicated as the cause of death or grievous injury or to those settled or adjudicated cases in which the manufacturer has satisfied itself that the product was the cause of such trauma. Rather, when the specific injury alleged by the plaintiff meets the definition of "grievous bodily injury"

contained in § 1116.2(b) of this part, the lawsuit falls within the scope of section 37 after settlement or adjudication. The manufacturer's opinion as to the validity of the allegation is irrelevant for reporting purposes. The category of injury alleged may be clear from the face of an original or amended complaint in a case or may reasonably be determined during pre-complaint investigation, post-complaint discovery, or informal settlement negotiation. Conclusory language in a complaint that the plaintiff suffered grievous bodily injury without further elaboration raises a presumption that the injury falls within one of the statutory categories, but is insufficient in itself to bring the suit within the ambit of the statute, unless the defendant manufacturer elects to settle such a matter without any investigation of the underlying facts. A case alleging the occurrence of grievous bodily injury in which a litigated verdict contains express findings that the injury suffered by the plaintiff did not meet the statutory criteria is also not reportable. Should a manufacturer believe that its product is wrongly implicated in an action, the statute expressly incorporates the mechanism for the manufacturer to communicate that belief to the Commission by denying in the report the involvement of the product or that the injury in fact suffered by the plaintiff was not grievous bodily injury, despite the plaintiff's allegations to the contrary. In addition, the statute imposes stringent confidentiality requirements on the disclosure by the Commission or the Department of Justice of information submitted pursuant to sections 37(c)(1) and 37(c)(2)(A). Moreover, it specifies that the reporting of a civil action shall not constitute an admission of liability under any statute or common law or under the relevant provisions of the Consumer Product Safety Act. In view of these safeguards, the reporting of lawsuits alleging the occurrence of death or grievous injury should have little adverse effect on manufacturers.

(c) Section 37 applies to judgments and "final settlements". Accordingly, the date on which a civil action is filed or the date on which the product that is the subject of such an action was manufactured is irrelevant to the obligation to report. A settlement is final upon the entry by a court of an order disposing of a civil action with respect to the manufacturer of the product that is the subject of the action, even through the case may continue with respect to other defendants.

(d) A judgment becomes reportable upon the entry of a final order by the

trial court disposing of the matter in favor of the plaintiff and from which an appeal lies. Because section 37(c)(2) specifies that a reporting manufacturer may include a statement that a judgment in favor of a plaintiff is under appeal or is expected to be appealed, Congress clearly intended section 37 to apply prior to the exhaustion of or even the initiation of action to seek appellate remedies.

(e) No language in section 37 limits the reporting obligation to those litigated cases in which the plaintiff prevails completely. Therefore, if a court enters a partial judgment in favor of the plaintiff, the judgment is reportable, unless it is unrelated to the product that is the subject of the suit. For example, if a manufacturer's product is exonerated during a suit, but liability is assessed against another defendant, the manufacturer need not report under section 37.

(f)(1) Section 37 applies to civil actions that allege the involvement of a particular model of a consumer product in death or grievous bodily injury. Section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)) defines a "consumer product" as any article, or component part thereof, produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or for the personal use, consumption, or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. The term "consumer product" does not include any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer.

(2) Since section 37 focuses on consumer products, it is the responsibility of the manufacturer of a product implicated in a civil action to determine whether the production or distribution of the product satisfies the statutory criteria of section 3(a). If it does, the action falls within the ambit of section 37. True industrial products are beyond the scope of section 37. However, if a lawsuit is based on an allegation of injury involving a consumer product, that suit falls within the scope of section 37, even though the injury may have occurred during the use of the product in employment. By the same token, occupational injuries arising during the fabrication of a consumer product are not reportable if the entity involved in the injury is not a consumer product at the time the injury occurs. In determining whether a product meets the statutory definition,

manufacturers may wish to consult the relevant case law and the advisory opinions issued by the Commission's Office of the General Counsel. The unique circumstances surrounding litigation involving asbestos-containing products warrant one exception to this analysis. The Commission, as a matter of agency discretion, will require manufacturers of such products to report under section 37 only those lawsuits that allege the occurrence of death or grievous bodily injury as the result of exposure to asbestos from a particular model of a consumer product purchased by a consumer for personal use. Such lawsuits would include not only injury to the purchaser, but also to other consumers including family, subsequent property owners, and visitors. The Commission may consider granting similar relief to manufacturers of other products that present a risk of chronic injury similar to that presented by asbestos. Any such request must contain documented evidence demonstrating that compliance with the reporting requirements will be unduly burdensome and will be unlikely to produce information that will assist the Commission in carrying out its obligations under the statutes it administers.

(g) The definition of "consumer product" also encompasses a variety of products that are subject to regulation under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act (15 U.S.C. 1471 et seq.), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), and the Refrigerator Safety Act (15 U.S.C. 1211 et seq.). Lawsuits involving such products are also subject to section 37, notwithstanding the fact that the products may be regulated or subject to regulation under one of the other statutes.

(h) Relationship of Section 37 to Section 15 of the CPSA.

(1) Section 37 plays a complementary role to the reporting requirements of section 15(b) of the CPSA (15 U.S.C. 2064(b)). Section 15(b) establishes a substantial obligation for firms to review information as it becomes available to determine whether an obligation to report exists. Accordingly, the responsibility to report under section 15(b) may arise long before enough lawsuits involving a product are resolved to create the obligation to report under section 37. The enactment of section 15(b)(3) in the Consumer Product Safety Improvement Act of 1990 reinforces this expectation. Under this amendment, manufacturers must report to the Commission when they obtain

information that reasonably supports the conclusion that a product creates an unreasonable risk of serious injury or death. Previously, the reporting obligation for unregulated products only arose when available information indicated that the product in question was defective and created a substantial product hazard because of the pattern of the defect, the severity of the risk of injury, the number of products distributed in commerce, etc. The effect of the 1990 amendment is discussed in detail in the Commission's interpretative rule relating to the reporting of substantial product hazards at 16 CFR part 1115.

(2) The new substantive reporting requirements of section 15(b)(3) support the conclusion that Congress intended section 37 to capture product-related accident information that has not been reported under section 15(b). Between the time a firm learns of an incident or problem involving a product that raises safety-related concerns and the time that a lawsuit involving that product is resolved by settlement or adjudication, the firm generally has numerous opportunities to evaluate whether a section 15 report is appropriate. Such evaluation might be appropriate, for example, after an analysis of product returns, the receipt of an insurance investigator's report, a physical examination of the product, the interview or deposition of an injured party or an eyewitness to the event that gave rise to the lawsuit, or even preparation of the firm's responses to plaintiff's discovery requests. Even if a manufacturer does not believe that a report is required prior to the resolution of a single lawsuit, an obligation to investigate whether a report is appropriate may arise if, for example, a verdict in favor of the plaintiff raises the issue of whether the product in question creates an unreasonable risk of death or serious injury.

(3) In contrast, the application of section 37 does not involve the discretionary judgment and subjective analyses of hazard and causation associated with section 15 reports. Once the statutory criteria of three settled or adjudicated civil actions alleging grievous injury or death in a two year period are met, the obligation to report under section 37 is automatic. For this reason, the Commission regards section 37 as a "safety net" to surface product hazards that remain unreported either intentionally or by inadvertence. The provisions in the law limiting such reports to cases in which three or more lawsuits alleging grievous injury or death are settled or adjudicated in favor

of plaintiffs during a two year period provide assurance that the product involved presents a sufficiently grave risk of injury to warrant consideration by the Commission. Indeed, once the obligation to report under section 37 arises, the obligation to file a section 15 report concurrently may exist if the information available to the manufacturer meets the criteria established in section 15(b) for reporting.

(4) Section 37 contains no specific record keeping requirements. However, to track and catalog lawsuits to determine whether they are reportable, prudent manufacturers will develop and maintain information systems to index and retain lawsuit data. In the absence of a prior section 15 report, once such systems are in place, such manufacturers will be in a position to perform a two-fold analysis to determine whether the information contained in such systems is reportable under either section 15(b) or 37. A manufacturer might conclude, for example, that the differences between products that are the subject of different lawsuits make them different models or that the type of injury alleged in one or more of the suits is not grievous bodily injury. Based on this analysis, the manufacturer might also conclude that the suits are thus not reportable under section 37. However, a reporting obligation under section 15 may exist in any event if the same information reasonably supports the conclusion that the product(s) contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

§ 1116.8 Determination of particular model.

(a) The obligation rests with the manufacturer of a product to determine whether a reasonable basis exists to conclude that a product that is the subject of a settled or adjudicated lawsuit is sufficiently different from other similar products to be regarded as a "particular model" under section 37 because it is "distinctive." To determine whether a product is "distinctive", the proper inquiry should be directed toward the degree to which a product differs from other comparable products in one or more of the characteristics enumerated in section 37(e)(2) and § 1116.2(c) of this part. A product is "distinctive" if, after an analysis of information relating to one or more of the statutory characteristics, a manufacturer, acting in accordance with the customs and practices of the trade of which it is a member, could reasonably conclude that the difference between

that product and other items of the same product class manufactured or imported by the same manufacturer is substantial and material. Information relevant to the determination of whether a product is a "particular model" includes:

(1) The description of the features and uses of the products in question in written material such as instruction manuals, description brochures, marketing or promotional programs, reports of certification of products, specification sheets, and product drawings.

(2) The differences or similarities between products in their observable physical characteristics and in components or features that are not readily observable and that are incorporated in those products for safety-related purposes;

(3) The customs and practices of the trade of which the manufacturer is a member in marketing, designating, or evaluating similar products.

(4) Information on how consumers use the products and on consumer need or demand for different products, such as products of different size. In analyzing whether products are different models, differences in size or calibration afford the basis for distinguishing between products only if those differences make the products distinctive in functional design or function.

(5) The history of the manufacturer's model identification and marketing of the products in question;

(6) Whether variations between products relate solely to appearance, ornamentation, color, or other cosmetic features; such variations are not ordinarily sufficient to differentiate between models.

(7) Whether component parts used in a product are interchangeable with or perform substantially the same function as comparable components in other units; if they are, the use of such components does not afford a basis for distinguishing between models.

(8) Retail price. Substantial variations in price arising directly from the characteristics enumerated in section 37(e)(2) for evaluating product models may be evidence that products are different models because their differences are distinctive. Price variations imposed to accommodate different markets or vendors are not sufficient to draw such a distinction.

(9) Manufacturer's designation, model number, or private label designation. These factors are not controlling in identifying "particular models".

(10) Expert evaluation of the characteristics of the products in

question, and surveys of consumer users or a manufacturer's retail customers.

(b) The definition of "consumer product" expressly applies to components of consumer products. Should a component manufacturer be joined in a civil action against a manufacturer of a consumer product, the section 37 reporting requirements may apply to that manufacturer after a combination of three judgments or settlements involving the same component model during a two year period, even though the manufacturer of the finished product is exempt from such reporting because the lawsuits do not involve the same particular model of the finished consumer product. The same proposition holds true for common components used in different consumer products. If the manufacturer of such a component is a defendant in three suits and the requisite statutory criteria are met, the reporting obligations apply.

(c) Section 37 expressly defines the reporting obligation in terms of the particular model of a product rather than the manner in which a product was involved in an accident. Accordingly, even if the characteristic of a product that caused or resulted in the deaths of grievous injuries alleged in three or more civil actions is the same in all of the suits, the requirement to report under section 37 would arise only if the same particular model was involved in at least three of the suits. However, the existence of such a pattern would strongly suggest that the obligation to file a report under section 15(b) (2) or (3) (15 U.S.C. 2064(b) (2) or (3)) exists because the information reasonably supports the conclusion that the product contains a defect that could present a substantial risk of injury to the public or creates an unreasonable risk of serious injury or death.

(d) Section 37 does not require that the same category of injury be involved in multiple lawsuits for the reporting obligation to arise. As long as a particular model of a consumer product is the subject of at least three civil actions that are settled or adjudicated in favor of the plaintiff in one of the statutory two year periods, the manufacturer must report, even though the alleged category of injury and the alleged causal relationship of the product to the injury in each suit may differ.

§ 1116.9 Confidentiality of reports.

(a) Pursuant to section 6(e) of the Consumer Product Safety Act (15 U.S.C. 2055(e)) no member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may

publicly disclose information furnished to the Commission under section 37(c)(1) and section 37(c)(2)(A) of the Act, except that:

(1) An authenticated copy of a section 37 report furnished to the Commission by or on behalf of a manufacturer may, upon written request, be furnished to the manufacturer or its authorized agent after payment of the actual or estimated cost of searching the records and furnishing such copies; or

(2) Any information furnished to the Commission under section 37 shall, upon written request of the Chairman or Ranking Minority Member of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives or any subcommittee of such committee, be provided to the Chairman or Ranking Minority Member for purposes that are related to the jurisdiction of such committee or subcommittee.

(b) The prohibition contained in section 6(e) (15 U.S.C. 2055(e)) against the disclosure of information submitted pursuant to section 37 only applies to the specific items of information that a manufacturer is required to submit under section 37(c)(1) and to statements under section 37(c)(2)(A) relating to the possibility or existence of an appeal of a reported judgment adverse to a manufacturer. Section 6(e)(1) does not, by its terms, apply to information that the manufacturer voluntarily chooses to submit pursuant to section 37(c)(2)(B). Thus, disclosure of such information is governed by the other provisions of section 6 of the CPSA (15 U.S.C. 2055) and by the interpretative rules issued by the Commission (16 CFR parts 1101 and 1015). For example, if a manufacturer includes information otherwise reportable under section 15 as part of a section 37 report, the Commission will treat the information reported pursuant to section 15 as "additional information" submitted pursuant to section 37(c)(2)(B). Generally, any issue of the public disclosure of that information will be controlled by the relevant provisions of section 6(b), including section 6(b)(5) relating to the disclosure of substantial product hazard reports, and section 6(a) relating to the disclosure of confidential or trade secret information. However, to the extent the section 15 report reiterates or references information reported under section 37, the confidentiality provisions of section 6(e) still apply to the reiteration or reference. In addition, interpretative regulations issued under section 6(b) of the Act establish that disclosure of certain information may be barred if the disclosure would not be fair in the

circumstances, 16 CFR 1101.33. Accordingly, issues of releasing additional information submitted pursuant to section 37 will also be evaluated under the fairness provisions of section 6(b). Should the Commission receive a request for such information or contemplate disclosure on its own initiative, the manufacturer will be given an opportunity to present arguments to the Commission why the information should not be disclosed, including, if appropriate, why disclosure of the information would be unfair in the circumstances. Among the factors the Commission will consider in evaluating the fairness of releasing the information are the nature of the information, the fact that it is an adjunct to a Congressional protected report, and whether the information in question supports the conclusion that a section 37 or 15(b), CPSA, report should have been filed earlier.

(c) Section 6(e) imposes no confidentiality requirements on information obtained by the Commission independently of a report pursuant to section 37. The provisions of section 6(b) govern the disclosure of such information.

§ 1116.10 Restrictions on use of reports.

No member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may use information provided to the Commission under section 37 for any purpose other than to carry out the responsibilities of the Commission.

§ 1116.11 Reports of civil actions under section 37 not admissions.

Pursuant to section 37(d), 15 U.S.C. 2084(d), the reporting of a civil action under section 37 shall not constitute an admission of—

- (a) An unreasonable risk of injury;
- (b) A defect in the consumer product which was the subject of the civil action;
- (c) A substantial product hazard;
- (d) An imminent hazard; or
- (e) Any other liability under any statute or any common law.

§ 1116.12 Commission response to section 37 reports.

Upon receipt of a section 37 report, the Commission will evaluate the information contained in the report and any relevant information contained in its files or data bases to determine what, if any, follow-up or remedial action by the Commission is appropriate. If the Commission requires additional information, it will notify the manufacturer in writing of the specific information to provide. In addition, the

Commission will routinely review section 37 reports to determine whether the reporting manufacturers have fulfilled their obligations under both sections 37 and 15(b) in a timely manner. Such a review may also engender a request for additional information, including the dates on which final orders were entered in each of the lawsuits reported under section 37. The Commission will treat any subsequent submission of information by the manufacturer as a submission under section 37(c)(2)(B) subject to the restrictions on public disclosure contained in sections 6(a) and (b) of the Consumer Product Safety Act.

Dated: July 29, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-18419 Filed 8-3-92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 88P-0373]

Canned Green Beans and Canned Wax Beans; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standard of identity for canned green beans and canned wax beans to permit the optional use of glucono delta-lactone. Glucono delta-lactone will serve to lower the pH, reduce processing time and temperature, and thereby enhance the color, flavor, and texture of the product. This action will, to the extent practicable, provide greater flexibility in the processing of canned green beans and canned wax beans and will promote honesty and fair dealing in the interest of consumers.

DATES: Effective October 5, 1992, for all products initially introduced or initially delivered for introduction into interstate commerce on or after this date. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 of a certain publication in 21 CFR 155.120(b)(2)(i), effective October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Frederick E. Boland, Center for Food

Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4701.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the Federal Register of October 11, 1990 (55 FR 41346), FDA issued a proposal to amend the standard of identity for canned green beans and canned wax beans in § 155.120 (21 CFR 155.120). The proposal responded to a citizen petition submitted jointly by the Seymour Canning Co., Seymour, WI 54185, the American National Can Co., Chicago, IL 60631, and Finnsugar Biochemicals, Inc., Schaumburg, IL 60173. The petition requested that FDA amend the standard of identity for canned green beans and canned wax beans (§ 155.120) to permit the optional use of added glucono delta-lactone, either alone or in combination, with other acidulants permitted by the standard. According to the petition, glucono delta-lactone acts as a pH control agent and serves to lower the equilibrium pH to below 4.6, reduce the time and temperature parameters for thermal processing, and thereby enhance the color, texture, and flavor of canned green beans and canned wax beans.

On its own initiative, FDA proposed to update the method of analysis in § 155.120(b)(2)(i) to refer to the latest edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 15th ed. (1990), as well as reference the new address of the AOAC office. Since development of the proposal, the address has been corrected in the existing regulation. Interested persons were given until December 10, 1990, to submit comments. No comments were received in response to the proposal.

II. Reproposed Rule

The petition submitted by the Seymour Canning Co., the American National Can Co., and Finnsugar Biochemicals, Inc., was filed under section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)) which requires formal rulemaking in any action for the amendment of a food standard. However, on November 8, 1990, the Nutrition Labeling and Education Act (the 1990 amendments) was signed into law. The 1990 amendments removed food standards, except for the amendment or repeal of standards of identity for dairy products (21 CFR Parts 131, 133, and 135) and maple sirup (21 CFR 168.140), from the formal rulemaking procedures of 21 U.S.C.

371(e). Consequently, further action on the petition submitted by the Seymour Canning Co., the American National Can Co., and Finnsugar Biochemicals, Inc., is now subject to the informal rulemaking procedures (notice and comment rulemaking) of section 701(a) of the act (21 U.S.C. 371(a)). To reflect this change in the statutory authority and to ensure that no one is prejudiced by this change in procedure, FDA published a repropose rule in the Federal Register of June 4, 1991 (56 FR 25385). Interested persons were given until July 5, 1991, to comment.

III. Comments

No comments were received in response to the repropose rule.

The agency believes, as explained in the proposal, that it is reasonable to provide for the use of glucono delta-lactone as a pH control agent in canned green beans and canned wax beans, and that such use will promote honesty and fair dealing in the interest of consumers. Therefore, in the absence of comments opposed to this action, the agency is amending the standard of identity for canned green beans and canned wax beans in § 155.120(a)(3) and (b)(2), as set forth below to permit the optional use of glucono delta-lactone. In addition, the agency is updating the method of analysis in § 155.120(b)(2)(i) to refer to the latest edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th ed. (1990), vol. 2, p. xii, Table 1.

IV. Economic Impact

FDA has examined the economic implications of this final rule to amend 21 CFR Part 155 as required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. FDA noted in the repropose rule that this amendment would permit increased flexibility in the processing of these foods to both large and small entities. Thus, FDA tentatively concluded that the regulation would have zero costs associated with it. FDA has received no new information or comments that would alter the tentative finding that it set out in the repropose rule that there is no substantive economic issue in this rulemaking, and that this is not a major rule as determined by the Executive Order 12291 or the Regulatory Flexibility Act.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 155

Food grades and standards, Incorporation by reference, Vegetables.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 155 is amended as follows:

PART 155—CANNED VEGETABLES

1. The authority citation for 21 CFR part 155 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 155.120 is amended by redesignating paragraphs (a)(3)(xiii) and (a)(3)(xiv) as paragraphs (a)(3)(xiv) and (a)(3)(xv), respectively; by adding a new paragraph (a)(3)(xiii); and by revising paragraph (b)(2)(i) to read as follows:

§ 155.120 Canned green beans and canned wax beans.

(a) * * *

(3) * * *

(xiii) Glucono delta-lactone.

* * *

(b) * * *

(2) * * *

(i) Determine the gross weight of the container. Open and distribute the contents of the container over the meshes of a U.S. No. 8 circular sieve with openings of 2.36 mm (0.0937 in), which has been previously weighed. The diameter of the sieve is 20.3 cm (8 in) if the quantity of contents of the container is less than 1.36 kg (3 lb) and 30.5 cm (12 in) if such quantity is 1.36 kg (3 lb) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications of such cloth set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th ed. (1990), vol. 2, p. xii, Table 1, "Nominal Dimensions of Standard Test Sieves (USA Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists, Inc., 2200 Wilson Blvd., suite 400, Arlington, VA 22201-3301, or may be examined at the Office of the Federal Register, 800 North

Capitol St. NW., Seventh Floor, suite 700, Washington, DC. Without shifting the material on the sieve, incline the sieve 17 to 20° to facilitate drainage. Two minutes after drainage begins, weigh the sieve and the drained material. Record in grams (ounces) the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

Dated: July 15, 1992.
Michael R. Taylor,
Deputy Commissioner for Policy.

[FR Doc. 92-18389 Filed 8-3-92; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 169

[Docket No. 91P-0149]

Mayonnaise; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standard of identity for mayonnaise by deleting the term "mayonnaise dressing" as an alternative common or usual name for this standardized food. The amendment will simplify labeling requirements and make the term "mayonnaise dressing" available for use as the common or usual name for new products that resemble mayonnaise organoleptically but do not comply with the standard of identity (e.g., that contain less vegetable oil than required by the standard). The term "mayonnaise dressing" may be used in conjunction with a descriptive statement of how the new product differs from the standardized food to create names for alternative mayonnaise-type products. This action is based on an industry petition and will promote honesty and fair dealing in the interest of consumers.

EFFECTIVE DATE: October 5, 1992, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5106.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the Federal Register of October 25, 1991 (56 FR 55244), FDA issued a proposal to amend the standard of identity for mayonnaise (21 CFR 169.140) by deleting the term "mayonnaise dressing" from paragraph (a) and deleting "or 'Mayonnaise dressing'" from paragraph (e). This action is based on a petition submitted by the Association for Dressings and Sauces, 5775 Peachtree-Dunwoody Rd., Atlanta, GA 30342. The purpose of the proposed action is to make the term "mayonnaise dressing" available for use in the naming of alternative mayonnaise-type products.

II. Comments

The agency received 10 comments from manufacturers of mayonnaise and other types of dressings, 2 comments from trade groups representing the industry, and 1 comment from a foreign government. All comments supported the proposed amendment in its entirety. Many comments stated that this amendment will help eliminate confusion over the availability of the term "mayonnaise dressing" for naming alternative mayonnaise-type products. Several comments maintained that the term "mayonnaise dressing" is not currently used by manufacturers of mayonnaise products, and that this action will aid consumer recognition of mayonnaise and alternative products. In addition, one comment stated that this action will encourage free market competition for alternative mayonnaise-type products.

After considering the comments received, FDA concludes that revising the standard of identity for mayonnaise by deleting the term "mayonnaise dressing" will simplify labeling of alternative mayonnaise-type dressings and will promote honesty and fair dealing in the interest of consumers.

FDA advises that the general principles set forth in 21 CFR 102.5 continue to apply to the naming of nonstandardized foods. In the absence of a common or usual name for a substitute food, the food may be labeled with an appropriately descriptive term (21 CFR 101.3). Such name must be consistent with regulations set forth in 21 CFR Parts 101, 102, and 105. In addition, descriptive terms used to characterize the level of any nutrient in food will have to comply with the provisions of section 403(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)), which was added by the Nutrition Labeling and Education Act of 1990, and with the regulations

promulgated to implement that section, after the effective date of that section and those regulations. The agency notes that in the Federal Register of November 27, 1991 (56 FR 60421), it proposed to define nutrient content claims that include the terms "low," "free," "reduced," and "lite" or "light."

III. Economic Impact

FDA has examined the economic implications of this final rule to amend 21 CFR Part 169 as required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. FDA noted in the proposal that labels would not need to be changed and that any reformulation would be unlikely. Thus, the agency tentatively concluded that the regulation would have zero costs associated with it. FDA has received no new information or comments that would alter the tentative finding that it set out in the proposal that there is no substantive economic issue in this rulemaking, and that this is not a major rule as defined by either Executive Order 12291 or the Regulatory Flexibility Act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 169

Food grades and standards, Oils and fats, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 169 is amended as follows:

PART 169—FOOD DRESSINGS AND FLAVORINGS

1. The authority citation for 21 CFR part 169 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 169.140 is amended by revising paragraphs (a) and (e) to read as follows:

§ 169.140 Mayonnaise.

(a) *Description.* Mayonnaise is the emulsified semisolid food prepared from vegetable oil(s), one or both of the

acidifying ingredients specified in paragraph (b) of this section, and one or more of the egg yolk-containing ingredients specified in paragraph (c) of this section. One or more of the ingredients specified in paragraph (d) of this section may also be used. The vegetable oil(s) used may contain an optional crystallization inhibitor as specified in paragraph (d)(7) of this section. All the ingredients from which the food is fabricated shall be safe and suitable. Mayonnaise contains not less than 65 percent by weight of vegetable oil. Mayonnaise may be mixed and packed in an atmosphere in which air is replaced in whole or in part by carbon dioxide or nitrogen.

(e) *Nomenclature.* The name of the food is "Mayonnaise".

Dated: July 15, 1992.
Michael R. Taylor,
Deputy Commissioner for Policy.
[FR Doc. 92-18390 Filed 8-3-92; 8:45 a.m.]
BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 4

[Docket No. R-92-1491; FR-2805-F-02]

RIN 2501-AB02

Prohibition of Advance Disclosure of Funding Decisions; Amendments

AGENCY: Office of the Secretary, HUD.
ACTION: Interim rule.

SUMMARY: On May 13, 1991 (56 FR 22088), the Department published a final rule, codified at 24 CFR part 4, implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989. Section 103 proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance by the Department. The purpose of section 103 is to avoid unfair competition, by controlling the flow and timing of information concerning the competition.

This interim rule amends part 4 to clarify certain of the non-disclosure requirements of section 103, and to further elaborate on the circumstances to which section 103 applies.

DATES: Effective Date: September 3, 1992. Comment Due Date: October 5, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-3815 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 103 of the Department of Housing and Urban Development Reform Act (Pub. L. 101-235, approved December 15, 1989) (section 103) proscribes the communication of certain information by Department employees to persons not authorized to receive that information during the selection process for the award of assistance by the Department. The specific information with which section 103 is concerned is addressed in the Department's rule implementing section 103, codified at 24 CFR part 4. This information, referred to as "covered selection information" in part 4, is defined to mean "information: (1) That is required by statute, regulation, or order to be confidential; (2) that is contained in an application or request for assistance; and (3) that is otherwise used in arriving at the Secretary's decision to make assistance available, unless that information is generally available to the public." (See 24 CFR 4.5) The objective of section 103, and part 4, is to preclude any person from receiving or obtaining information from the Department that would give an applicant an unfair advantage over other applicants who are competing for financial assistance.

In issuing the part 4 final rule (published May 13, 1991, 56 FR 22088), the Department believed that the rule's provisions were sufficient to meet the objective of section 103 without inhibiting the exchange of information that serves the purpose of the individual HUD-funded program and the overall objective of the agency. However, during the Federal Fiscal Year 1991 funding cycle, questions about section

103 and the part 4 rule were raised that suggested that the language of part 4 could be misinterpreted to hinder HUD employees in providing or obtaining information necessary to the performance of their responsibilities during the selection process. Additionally, the Department's experience with implementation of certain provisions of part 4 revealed that some disclosures that were clearly intended to be prohibited by section 103 might be interpreted as being permitted. Accordingly, the purpose of this interim rule is to address these problems.

This interim rule amends part 4 to clarify that the non-disclosure provisions of section 103 apply to potential applicants for assistance before the deadline for submission of applications. Part 4 also is revised to clarify that providing technical assistance to HUD employees, and obtaining technical assistance from HUD employees, during the selection process are legitimate program functions. Additionally, the amendments made by this rule address two instances when certain restrictions of part 4 do not apply. The first involves the situation in which there is no competitive distribution of funds. The second involves the situation in which there is no competitive advantage to be gained from a disclosure of designated information after a certain stage in the selection process. The following provides a more detailed explanation of the amendments to part 4 made by this rule.

Amendments to Part 4

Definition of "Assistance" (Section 4.5)

The definition of "assistance" in 24 CFR 4.5 has been revised to except from the prohibitions of section 103 those situations in which there is no competition in one or more categories of a multi-level funding program. Certain HUD funded programs may award funds in stages, or on the basis of categories, which represent the order of funding priority. For example, a HUD program which provides assistance to cover emergency health and safety problems of a housing development, as well as assistance to cover non-emergency problems, may award funds to applicants with emergency problems before awarding funds to applicants with non-emergency problems. The Department has found that once a determination has been made that all technically eligible applicants in a certain category can be funded without competition (i.e., without any rating or ranking among eligible applicants), no applicant gains a competitive advantage

by an announcement of the applicants that have been funded in that category. The Department also has found that the benefits to a successful applicant can diminish if the availability of funds is delayed until the selection process is completed for those categories of the program that are competitively funded.

The definition of "assistance" is therefore amended to emphasize that in a multi-level funding process, disclosure of covered selection information before a determination has been made that funding in one or more categories of the funded program can be made non-competitively is a violation of section 103, as is the disclosure of covered selection information concerning those categories that will be funded only after a competition.

Examples of Prohibited Disclosures (Section 4.100(b))

Section 4.100(b) of the part 4 rule (24 CFR 4.100(b)), which provides examples of prohibited disclosures, is revised to clarify that the number of applicants or the identity of a particular applicant may be disclosed after the deadline for the submission of applications has passed, but before the completion of the selection process. The Department has determined that there is no competitive advantage to be gained from the release of this information after the deadline for submission of applications has expired, and there is no lawful action an applicant or potential applicant could take based on possession of this information, that would affect the competitive funding process. Many persons, such as members of the Congress or representatives of research organizations, have a legitimate need to know this information.

Permissible Disclosures (Section 4.105(a))

Not every applicant chooses to avail itself of the informational services and material that the Department makes available to all applicants during the selection process, as provided in 24 CFR 4.105(a)(1). Accordingly, § 4.105(a)(1) has been revised to make it clear that it is the Department's act of making this information available to all applicants—not the applicants' acceptance of the opportunity to receive the information—that controls whether the information may be disclosed. In that regard, § 4.105(a)(1) also has been revised to clarify that the information described in this section must be made available on a uniform basis to potential applicants as well as to applicants.

Language also has been added to § 4.105(a)(1) to clarify that it is permissible to provide technical

assistance to potential applicants in the preparation of their application packages, as long as this technical assistance is available to all potential applicants on a uniform basis. The part 4 rule contains examples of technical assistance that a HUD employee may and may not provide to a potential applicant without violating the nondisclosure provisions of section 103. The type of available technical assistance also may be described in a notice of funding availability (NOFA).

Technical Assistance Provided to HUD (Section § 4.105(a)(7))

Section 4.105(a)(7) has been revised to clarify that the Department may seek technical assistance in the review of applications from experts in a particular field or discipline who are regularly employed by other government agencies, but whose participation in the selection process may not have been reflected in the HUD program regulations. For example, a selection official for HUD's program concerning housing for persons with disabilities may find it beneficial in making funding decisions to obtain advice from an individual who is an expert in new methods of providing accessible accommodations to persons with disabilities. The Department believes that it should be able to obtain the advice of these types of experts who are employed by another governmental entity (other than an applicant), whether or not the existing program regulations anticipate the availability or benefit of that advice. However, the Department also believes that experts who are not HUD employees and who participate in the selection process should be subject to the non-disclosure requirements of section 103.

Accordingly, § 4.10(a), which addresses coverage of part 4, is revised to reflect that non-HUD employees who participate in the selection process at the invitation of the Department are covered by the provisions of part 4. Additionally, this rule revises § 4.105(a)(7) to require these non-HUD employees to sign a certificate of compliance with the non-disclosure provisions of section 103 and the part 4 rule.

The amendments to § 4.10(a) and § 4.105(a)(7) reflect the Department's concern that it be able to obtain the broadest range of expert advice in making funding decisions for programs which require expertise in certain fields or disciplines, while also preserving the integrity of the non-disclosure provisions of section 103.

Disclosure of Disqualification (Section 4.105(b))

Once an applicant has been disqualified from the competitive funding process for the reasons described in § 4.105(b), which govern permissible disclosures, the individual or entity that applied for assistance, is technically no longer an "applicant." Further, as long as the ineligible applicant has been notified of the disqualification, and the deadline for submission of applications has passed, there is no competitive advantage to be gained from disclosure of the fact that the applicant has been disqualified, because disqualification of an applicant at a pre-award stage is based on technical reasons that cannot be rescinded.

As a practical matter, the Department receives inquiries from members of the Congress and others concerning disqualification decisions. If otherwise authorized by law, the Department should be permitted to acknowledge facts concerning an applicant's disqualification—facts about which these inquirers frequently already have unverified knowledge. However, it is the position of the Department that it will not publicize information identifying disqualified applicants, nor reveal information concerning the reasons for any applicant's disqualification where the selection process has not been completed and the reason or reasons for disqualification have not yet been communicated to the applicant.

Justification for Interim Rulemaking

It is the Department's general policy to publish a rule for notice and comment before issuing a rule for effect, in accordance with its own rule on rulemaking, codified at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without notice and prior public comment in that prior public procedure contrary to the public interest. The amendments made by this rule clarify certain provisions of the part 4 rule, which prohibit the disclosure of certain information concerning the selection process for the award of financial assistance by HUD. These clarifications are beneficial to both applicants for HUD assistance and HUD employees in

connection with the administration and distribution of funds under HUD's financial assistance programs.

Although this rule is being published for immediate effect, the Department requests comments from the public on this rule. All public comments will be considered by the Department in the development of a final rule.

Other Matters**Environmental Impact**

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with the development of the part 4 final rule, which was published on May 13, 1991 (56 FR 22088). That Finding of No Significant Impact remains applicable to this rule which amends part 4, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it will not (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and, in so doing, certifies that this rule will not have a significant economic impact on small entities. The focus of 24 CFR part 4, and of the amendments made to part 4 by this rule, is with the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD. Part 4 provides for the imposition of sanctions on HUD employees and applicants for HUD assistance determined to have engaged in

prohibited conduct. These sanctions are not directed at small entities *per se*.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12806, the Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. This rule is solely concerned with certain kinds of conduct by HUD employees and by applicants during the selection process for the award of financial assistance by HUD. No change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of the Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The focus of 24 CFR part 4, and of the amendments made to part 4 by this rule, is with the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD. The rule primarily will affect HUD employees.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 4

Administrative practice and procedure; Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 4 is amended to read as follows:

PART 4—PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS

1. The authority citation for 24 CFR part 4 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 3537a.

2. In § 4.5, the introductory text of the definition of "assistance," which precedes the list of programs that

accompanies this definition, is revised to read as follows:

§ 4.5 Definitions.

Assistance means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Department that provides by statute, regulation, or otherwise for the competitive distribution of assistance. The term does not include any mortgage insurance provided under a program administered by the Department or any contract (e.g., a procurement contract) that is subject to the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1). The term includes only those elements of the programs listed below that provide for the competitive distribution of assistance. If sufficient funds exist to fund all eligible applicants in one or more categories or phases of an otherwise competitive program, the requirements and prohibitions in this part will not apply to the non-competitive distribution of funds in those categories or phases. However, this part does apply to all categories or phases of a program for which there is competitive distribution of funds, and to that part of any selection process that occurs before a determination is made that sufficient funds exist to fund all eligible applicants non-competitively.

The list of programs included in this rule will be amended from time to time to reflect the addition of new competitive programs. Because a competitive assistance program may be established after June 12, 1991, the effective date of part 4, the list cannot be considered an exclusive one. However, the fact that a new competitive program has not yet been added to the list by a conforming amendment to the rule will not create the implication that the new program is outside the reach of the prohibitions on advance disclosure contained in this rule.

3. In § 4.10, paragraph (a) is revised to read as follows:

§ 4.10 Scope.

(a) *Coverage.* The prohibitions against improper disclosure of covered selection information apply to any person who is an employee of the Department. In addition, the Department will require any other person who participates at the invitation of the Department in the selection process to sign a certification that he or she will be bound by the provisions of this part.

4. In § 4.100, paragraph (b) is revised to read as follows:

§ 4.100 Prohibition of advance disclosure of funding decisions.

(b) *Examples of prohibited disclosures.* There are many disclosures that will be prohibited by this section, but since they will be fact-specific to a particular program, they cannot be specified here.

(1) The following are examples of types of information, the disclosure of which, at any time during the selection process, shall be a violation of this section:

- (i) Information regarding any applicant's relative standing;
- (ii) The amount of assistance requested by any applicant;
- (iii) Any information contained in an application;

(2) The following are examples of types of information, the disclosure of which, before the deadline for the submission of applications, shall be a violation of this section:

- (i) The identity of any applicant; and
 - (ii) The number of applicants.
5. In § 4.105, paragraph (a)(1) and (a)(7) are revised, and a new paragraph (c) is added, to read as follows:

§ 4.105 Permissible disclosures.

(a) Notwithstanding the provisions of § 4.100, an employee is permitted to disclose information during the selection process with respect to:

(1) The requirements of a HUD program or programs, including unpublished policy statements and the provision of technical assistance concerning program requirements, provided that the requirements or statements are disclosed on a uniform basis to any applicant or potential applicant. For purposes of this paragraph (a)(1), the term "technical assistance" includes such activities as explaining and responding to questions about program regulations, defining terms in an application package, and providing other forms of technical guidance that may be described in a NOFA. Before the deadline for the submission of applications, the term "technical assistance" may include identification of those parts of an application that need substantive improvement, but this term does not include advising the applicant how to make those improvements.

(7) Procedures that are required to be performed to process an application, e.g., environmental or budget reviews, and technical assistance from experts in fields who are regularly employed by

other government agencies, provided that the agency with which the expert is employed or associated is not an applicant for HUD assistance during the pending funding cycle.

(b) * * *

(c) Once an applicant has been notified, in accordance with paragraphs (b) (1) or (2) of this section, that its application has been rejected (but in no event before the deadline for the submission of applications), an employee may confirm the fact of the applicant's disqualification in response to inquiries from members of the public.

Dated: July 16, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92-18364 Filed 8-3-92; 8:45 am]

BILLING CODE 4210-24-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC1-1-5356; FRL-4155-4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Non-CTG RACT for VOC Emissions From Engraving and Plate Printing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a municipal regulation as a revision to the District of Columbia's State Implementation Plan (SIP). This revision establishes and requires the use of reasonable available control technology (RACT) for the reduction of volatile organic compound (VOC) emissions from engraving and plate printing facilities, and is contained in section 710 of title 20 of the District of Columbia Municipal Regulations. The District submitted this revision to impose RACT on a source category of printing operations with potential emissions of 100 tons per year (TPY) or more of VOC for which EPA has not published a Control Technique Guideline (CTG). The intended effect of this action is to approve a RACT determination for non-CTG printing operations made by the District in accordance with commitments made in the ozone control portion of its State Implementation Plan (SIP). This action is being taken in accordance with section 110 and part D of the Clean Air Act as amended by the Clean Air Act Amendments of 1990.

EFFECTIVE DATE: This rule will become effective on September 3, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation & Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Avenue, SE., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Lewis at (215) 597-6863, of the EPA Region III address above.

SUPPLEMENTARY INFORMATION: The District of Columbia committed in its 1982 Ozone SIP to develop RACT regulations for non-CTG VOC sources or sources categories located in the District, which have the potential to emit 100 TPY or more. One of the non-CTG source categories which the District identified was engraving and plate printing. The U.S. Bureau of Engraving and Printing (BEP) is the only source in the District nonattainment area which has been identified in this printing operations source category.

On June 21, 1985, the District of Columbia submitted as a proposed SIP revision a proposed RACT regulation that proposed among other things, to control VOC emissions from engraving and plate printing facilities as part of their ozone control strategy. On October 25, 1988 (52 FR 42977), EPA published a Notice of Proposed Rulemaking proposing approval of that regulation. On April 1, 1992, the District formally submitted additional information supplementing the June 21, 1985 submittal.

This approval addresses the District's non-CTG regulation for heat set intaglio, non-heatset paperwipe intaglio, non-heatset cylinder-wipe intaglio, offset lithography for both heatset and non-heatset, letterpress and letterpress printing operations. The RACT requirements for these printing operations are contained in section 710 of title 20 of the District of Columbia Municipal Regulation, dated January 11, 1985. This regulation requires affected facilities to control fugitive press emissions by reducing the VOC content in ink solvents, wiping solutions and dampening solutions and to control emissions from the press dryer (stack emissions) by installing and operating afterburners. The recordkeeping requirements include weekly collection and testing of ink

samples throughout the year. To determine compliance, the VOC content of these samples are analyzed using test method ASTM D-2369-81. Further details of the RACT requirements for engraving and plate printing facilities can be found in the Notice of Proposed Rulemaking (NPR) published on October 25, 1988 (52 FR 42977). Further details are also contained in the Technical Support Document (TSD) prepared to accompany this action, and will not be restated here. Copies of the TSD are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

EPA Evaluation: As stated in the NPR, EPA is approving the equivalency provision found at § 710.8 of the regulation as an available regulatory mechanism under this regulation whereby alternative controls may be requested and approved. However, EPA approval of this mechanism does not constitute pre-approval of any such alternative requirements. Before any such alternative requirements may be substituted, they must be approved by the District and submitted to EPA for approval as a SIP revision.

Public Comments: In response to the proposed rulemaking, comments were received, during the comment period, from the U.S. BEP. These comments are summarized below.

U.S. BEP Comment #1: Discrepancies in Table 1 of the Regulation. The data in Table 1 should be corrected to reflect the VOC content of ink limit, as 15 percent after December 31, 1986 and 15 percent after December 31, 1987 respectively, for non-heatset cylinder wipe intaglio inks.

U.S. EPA's Response #1: EPA agrees that Table 1 contained a typographical error. The appropriate corrections for the VOC content of ink limit, from 12 percent to 15 percent after December 31, 1986, and from 15 percent to 12 percent after December 31, 1987, have been made.

U.S. BEP Comment #2: Recordkeeping and Determination of Compliance. With regard to recordkeeping and determination of compliance, the BEP has an established program for obtaining and maintaining information necessary for determining compliance. The District has required that BEP, in addition to the collection and reporting of production and operating data, include collection and testing of ink samples weekly and collection and testing of dampening solutions weekly. This requirement is stipulated in all the BEP press operating permits.

In an effort to maintain current practices for determining compliance with EPA requirements, the BEP

requested that the EPA proposal imposing daily collection and testing of ink samples, one month per quarter, be revised to correspond with the current BEP requirements for weekly collection and testing of inks throughout the year. The proposed sample collection requirements added to the current District requirements, would place an unreasonable burden on the BEP. BEP believes that the current method has proven to be reliable and effective in determining compliance and that this method also helps to alleviate and regulate manpower requirements.

U.S. EPA's Response #2: EPA has carefully reviewed BEP's request for weekly collection and testing of inks throughout the year, instead of the proposed daily collection and testing of ink samples, one month per quarter. EPA finds BEP's methods acceptable for determining compliance.

Final Action: EPA is approving Section 710, "Engraving and Plate Printing", title 20 of the District of Columbia Municipal Regulations dated January 11, 1985 and effective March 15, 1985, as a revision to the District of Columbia's federally approved SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical economic and environmental factors, and in relation to relevant statutory and regulatory requirements.

This action, which approves a revision to the District of Columbia's SIP consisting of the addition of section 710, "Engraving and Plate Printing", of title 20 of the District of Columbia Municipal Regulations, has been classified as a Table 3 action under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), and is therefore delegated for the Regional Administrator decision and signoff. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 1992. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air Pollution Control, Hydrocarbons, Incorporation by reference,

Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 6, 1992.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Part 52 chapter I, title 40 of the Code of Federal Regulations is to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7641q.

Subject J—District of Columbia

2. Section 52.470 is amended by adding paragraph (c)(27) to read as follows:

§ 52.470 Identification of plan.

(c) * * *

(27) Revisions to the State Implementation Plan submitted by the Mayor of the District of Columbia on June 21, 1985, which define and impose RACT to control volatile organic compound emissions from engraving and plate printing sources.

(i) Incorporation by reference.

(A) A letter from the Mayor of the District of Columbia dated June 21, 1985, submitting revision to the District of Columbia State Implementation Plan, and a letter from the District of Columbia Department of Consumer and Regulatory Affairs dated April 1, 1992, formally submitting additional information supplementing the June 21, 1985 submittal.

(B) Section 710 of title 20, submitted June 21, 1985 and effective March 15, 1985.

3. Section 52.472 is amended by adding paragraph (d) to read as follows:

§ 52.472 Approval status.

(d) * * *

(d) Section 710 of title 20 of the District of Columbia Regulations is approved with the following condition: Any alternative controls or exemptions under section 710.8 approved or granted by the District of Columbia are subject to a public notice and public hearing requirements and must be submitted to EPA as SIP revisions. Such alternatives or exemptions are not effective until approved as SIP revisions by EPA.

[FR Doc. 92-18301 Filed 8-3-92; 8:45 am]

BILLING CODE 5580-50-M

40 CFR Part 52

[MS-017-5319; FRL-4151-5]

Approval and Promulgation of Implementation Plans; Mississippi: Approval of Revisions to the Prevention of Significant Deterioration (PSD) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Mississippi state implementation plan (SIP). These revisions were submitted to EPA by the State of Mississippi through the Department of Environmental Quality (MDEQ) on June 14, 1991, in response to the requirement that states either revise their SIP to include the Federal nitrogen dioxide (NO₂) increments for PSD or request delegation from EPA. The revisions being approved today incorporate the Federal NO₂ increments into the Mississippi PSD regulations.

DATES: This action will be effective on October 5, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Danny Orlando of EPA Region IV's Air Programs Branch (See EPA Region IV address below). Copies of the material submitted by the Mississippi Department of Environmental Quality may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. Air Quality Division, Office of Pollution Control, Department of Environmental Quality, Post Office Box 10385, Jackson, Mississippi 39289-0385.

FOR FURTHER INFORMATION CONTACT: Danny Orlando of the EPA Region IV Air Programs Branch at 404-347-2864 and at the above address.

SUPPLEMENTARY INFORMATION: On October 17, 1988 (53 FR 40656), EPA promulgated regulations under section 166 of the Clean Air Act (CAA) to prevent significant deterioration of air quality due to emission of nitrogen oxides. These regulations established the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above baseline concentration;

these maximum allowable increases are called increments. The nitrogen dioxide (NO₂) increment regulations were promulgated in 40 CFR 51.166 and 52.21. The 40 CFR 51.166 regulations promulgated on October 17, 1988, specified the minimum rulemaking requirements for approvable SIP revisions. The 40 CFR 52.21 regulations promulgated on the above date specified the revisions that would eventually have been applied by delegation (or directly by EPA) to areas which have not, within a specified time, submitted SIP revisions to EPA pursuant to the 40 CFR 51.166 revisions. The revision to 40 CFR Part 51.166 became effective on October 17, 1989. However, the revision to 40 CFR Part 52.21 became effective on November 19, 1990.

On June 28, 1990, the Mississippi Commission on Environmental Quality adopted Regulation APC-S-5, "Regulations for the Prevention and Significant Deterioration of Air Quality." Regulation APC-S-5 essentially adopted by reference EPA's 40 CFR 52.21 regulations. The effective date of Regulation APC-S-5 was July 17, 1990. Since the effective date of Regulation APC-S-5 predated the effective date of the NO₂ increment revisions, EPA's approval of Mississippi's PSD regulation could not include the NO₂ increment revision. On October 15, 1990 (55 FR 41691), EPA approved the Mississippi PSD SIP except for the NO₂ increment program.

On April 25, 1991, the Mississippi Commission on Environmental Quality adopted a revision to Regulation APC-S-5, which changed the adoption by reference date. The revision involved a change to Paragraph 1 of Regulation APC-S-5 which updated the adoption-by-reference date. The phrase "as promulgated by" was substituted for the phrase "in effect on." The last sentence in Paragraph 1 now reads, "40 CFR 52.21 and 51.166 as used in this regulation refer to the Federal regulations as promulgated by the date of adoption of this regulation." The adoption date (April 25, 1991) now occurs after the effective date of the 40 CFR 52.21 NO₂ increment revisions. On June 14, 1991, the MDEQ submitted the revisions to the Mississippi SIP to EPA which became state effective on May 28, 1991.

In addition to the regulatory language changes, EPA issued guidance on August 17, 1990, which required several program element commitments to be submitted with the regulations as follows: (1) Analyses—Agencies must require NO₂ increment consumption analyses for all major new or modified sources, and nitrogen oxides (NO_x)

emissions from minor sources must be considered in those analyses, and (2) Increment consumption—Agencies must determine NO₂ increment consumption for the transition period between February 8, 1988, (major source NO₂ baseline date) and the date the State program goes into effect, and conduct a periodic assessment of NO₂ increment status.

On March 8, 1991, the MDEQ submitted a letter committing to perform the above program element requirements including an initial increment consumption analyses report. The revisions being approved meet all of the requirements for incorporating the federal NO₂ increments into the Mississippi SIP.

Final Action

EPA is today approving the revision to the Mississippi PSD SIP listed above. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue

the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: June 16, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671(q).

Subpart Z—Mississippi

2. Section 52.1270 is amended by adding paragraph (c)(22) to read as follows:

§ 52.1270 Identification of plan.

* * *

(c) * * *

(22) Prevention of Significant Deterioration regulation revision to include Nitrogen Dioxide increments for the State of Mississippi which was submitted by the Mississippi Department of Environmental Quality on June 14, 1991.

(i) Incorporation by reference.
(A) Revision to Regulation APC-S-5, Paragraph 1, Regulations for the Prevention of Significant Deterioration of Air Quality, which became State effective on May 28, 1991.

(ii) Other material.
(A) Letter of June 14, 1991 from the Mississippi Department of Environmental Quality.

(B) Letter of March 8, 1991, from the Mississippi Department of Environmental Quality regarding minimum program elements.

[FR Doc. 92-18294 Filed 8-3-92; 8:45 am]

BILLING CODE 6580-50-M

40 CFR Part 721

[OPPTS-50588B; FRL-4068-8]

Polyaromatic Urethane; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking the a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the above chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

EFFECTIVE DATE: The effective date of this rule is September 3, 1992.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 6, 1990 (55 FR 46766), EPA issued a SNUR establishing significant new uses for polyaromatic urethane. Because of additional data EPA has received for this substance, EPA proposed to revoke this SNUR in the **Federal Register** of March 23, 1992 (57 FR 9995).

I. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS-50588 (P-89-998). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this revocation.

II. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of March 23, 1992 (57 FR 9995). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

III. Objectives and Rationale of Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA

concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is revoking the SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 27, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2568 [Removed]

2. By removing § 721.2568.

[FR Doc. 92-18455 Filed 8-3-92; 8:45 am]

BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-45

[FPMR Amendment H-185]

Utilization and Disposal of Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation sets forth specific requirements for the sale of three- and four-wheeled all terrain vehicles (ATVs). The regulation is necessary to provide current policy on the sale of all terrain vehicles to ensure that uniform procedures are followed when offering the vehicles for public sale.

EFFECTIVE DATE: August 4, 1992.

FOR FURTHER INFORMATION CONTACT: Lester D. Gray, Director, Property Management Division (703-305-7240).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

In 1988, the Consumer Product Safety Commission and various all terrain vehicle (ATV) distributors entered into a consent decree under which the distributors agreed not to distribute or sell three-wheeled ATVs. The distributors also agreed to certain requirements for the distribution or sale of four-wheeled ATVs. The requirements include such measures as warning notices and labels, owners' manual statements, a public advertising campaign, an information hotline for consumers, and a training program. Although the consent decree is not applicable to sales of used ATVs, and while GSA has made no independent investigation regarding

performance or safety of ATVs, GSA has determined that ATVs no longer needed by the Government will be disposed of in accordance with the procedures set forth in this amendment.

List of Subjects in 41 CFR Part 101-45

Government property management, Surplus Government property.

PART 101-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

1. The authority citation for part 101-45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-45.3—Sale of Personal Property

2. Section 101-45.309-13 is added to read as follows:

§ 101-45.309-13 All terrain vehicles.

(a) Three-wheeled all terrain vehicles (ATVs) may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

(b) Four-wheeled ATVs no longer needed by the Government can be exchanged with a dealer under the provisions of § 101-46.302. If the unit cannot be exchanged, four-wheeled ATVs may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

Dated: June 19, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-18392 Filed 8-3-92; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-35; FCC 92-275]

Operator Service Access and Pay Telephone Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order on Reconsideration.

SUMMARY: Five petitions for reconsideration or clarification were filed regarding Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736, 58 FR 40,793 (1991) (hereinafter Report and Order), in which the Commission adopted policies and

rules concerning consumer access to operator service providers (OSPs) and compensation for competitive public payphone owners for calls not utilizing their presubscribed OSPs. In response to the petitions, the Commission adopted an Order on Reconsideration (hereinafter Order) in which it reaffirmed that: (1) Call aggregators must allow consumers to use equal access ("10XXX") codes according to the schedule described in the original Report and Order, with certain clarifications; (2) all OSPs, except those exempted in the Order, must establish an 800 or 950 access number within six months of the effective date of the previously adopted rules; and (3) calls initiated with an 800 number that does not serve as an OSP's access code are not within the scope of the statutory provision that required the Commission to consider payphone compensation. In addition, the Commission granted the request to order local exchange carriers (LECs) to offer blocking and screening services designed to control potentially fraudulent 10XXX calling. The Commission deferred certain unblocking deadlines pending the deployment of the required LEC services.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT:

Kurt A. Schroeder, Enforcement Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 91-35 (FCC 92-275), adopted June 23, 1992, and released July 10, 1992. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Paperwork Reduction

Public reporting burden for the collection of information is estimated to average 258.13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information and Record Management Branch, room 416,

Paperwork Reduction Project (3060-0298), Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0298), Washington, DC 20503.

Summary of Order on Reconsideration

I. Background

1. Section 226(e) of the Communications Act of 1934, 47 U.S.C. 226(e), required the Commission to conduct a separate rule making proceeding to address operator service access and payphone compensation issues. Regarding access, the Commission was to determine whether: (a) Call aggregators should be required to allow consumers to use equal access ("10XXX") codes; or (b) all operator service providers ("OSPs") should be required to establish an 800 or 950 access number; or (c) both (a) and (b). As for compensation, Section 226(e) required the Commission to consider the need to prescribe compensation for competitive public payphone owners for "calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones."

2. After consideration of the extensive public comments on the proposals set out in the Notice of Proposed Rule Making that initiated this docket,¹ the Commission adopted rules requiring aggregators to unblock 10XXX access according to the type and capabilities of their equipment and the cost of modifying their equipment to process 10XXX dialing sequences selectively.² Specifically, aggregators who provide payphones were required to unblock 10XXX access within six months of the effective date of the new rules. Aggregators who use non-payphone equipment that can selectively process 10XXX dialing sequences³ were

required to unblock within six months or upon installation of such equipment, whichever is sooner. Aggregators who install equipment manufactured or imported on or after April 17, 1992, were required to unblock 10XXX access upon installation of such equipment. Those aggregators who can modify their equipment for no more than \$15.00 per line to selectively process 10XXX access must unblock within eighteen months. Finally, all other aggregators must unblock 10XXX access no later than April 17, 1997. The Commission also required the establishment of 800 or 950 access numbers by all OSPs within six months so as to provide an access method for consumers at aggregator locations where 10XXX access either is temporarily unavailable during the unblocking period or is technologically impossible because the telephone is served by a central office that has not converted to equal access. In addition, the Commission determined that considerations of equity required it to prescribe compensation for competitive public payphone owners for access code calls.

3. Five petitions for reconsideration or clarification were filed following the release of the Report and Order. In addition, motions were filed requesting that the Commission partially stay the 10XXX unblocking requirements until it ruled on certain issues raised on reconsideration and requesting that the Commission stay the 800/950 requirement for a specified group of OSPs until it determined whether the requirement should be waived for such OSPs. The Commission granted the motions⁴ and has addressed the related substantive issues in the reconsideration Order.

II. Discussion

A. 10XXX Access

1. Whether 10XXX Unblocking Should Be Required

4. The Commission declines to alter its threshold determination that 10XXX is an efficient form of access that consumers should be able to use when choosing their preferred OSPs. The ready availability of 10XXX access, along with 800 and 950 access, will allow consumers to use any of the

¹ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Notice of Proposed Rule Making, 6 FCC Rcd 1448, 58 FR 11,136 (1991).

² See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736, 58 FR 40,792, 40,844 (1991) (hereinafter Report and Order).

³ Aggregator equipment has "selective" 10XXX capabilities if it is technologically capable of identifying the dialing of a 10XXX code followed by any sequence of numbers that will result in billing to the originating telephone and is, at the same time, technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving 10XXX codes. See 47 CFR 64.704(c).

⁴ See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Order, 7 FCC Rcd 2146 (1992). This stay was to remain in effect until the Commission ruled on the related substantive issues, which it does in the Order on Reconsideration. Accordingly, the stay is lifted effective six months from the release of the Order on Reconsideration, subject to the unblocking schedule set forth therein.

established access methods when exercising their right of choice among OSPs. The Commission was aware, when it adopted the unblocking rules, that some aggregator equipment, as noted by two petitioners, would not be able to process 10XXX dialing sequences unless the equipment was modified or replaced by the aggregator. The Commission has sought to minimize any associated financial burden, however, by prescribing a cost limit for modification that it thinks is modest and reasonable, and by tying that cost limit to the phased unblocking schedule. While the total modification cost might be large, at \$15.00 per line, for an aggregator with a system containing many lines, the actual per line cost would still be small enough to be recovered easily from the users of those lines. In addition, many aggregators may be able to unblock at a cost that is substantially less than the per line limit. Further, the Commission disagrees with the petitioners' claim that it has neglected its obligation under section 226(g) to take actions that will ensure that aggregators are not exposed to undue risk of fraud. The phased unblocking schedule has, as a basis, the fraud prevention capabilities of aggregator equipment. Only when an aggregator's equipment can reasonably be expected to have selective 10XXX capabilities that can screen potentially fraudulent 10XXX dialing sequences will the aggregator be expected to unblock.⁵ The Commission also disagrees with the petitioners' assertion that the availability of 800 and 950 access makes 10XXX unblocking unnecessary. The stated intention in this proceeding is "to ensure that consumers have the opportunity to choose freely among the available interstate operator services." This being the paramount concern, the Commission thinks it essential that consumers have a reasonable amount of discretion to use whatever access methods they prefer, without limitations by aggregators.

5. One petitioner also challenges the Commission's conclusion that 10XXX access is efficient, stating that unblocking costs and toll fraud are inefficiencies related to 10XXX access. This argument fails, however, to address the efficiencies of 10XXX for the

consumer that have been identified: the shorter dialing sequence, five digits, compared to other access methods, which have seven and eleven digits; and the ability of the consumer to dial the called number immediately after the 10XXX code without waiting for an additional prompt, as is necessary with 800 and 950 access.

6. Further, this petitioner has misconstrued the effect on the Commission's decision of the statutory requirement that new aggregator equipment have selective 10XXX capabilities. The Commission did not contend in the Report and Order that this statutory provision required 10XXX unblocking for existing aggregator equipment. On the contrary, the Commission acknowledged that Congress did not intend this provision to prejudice a decision on the 10XXX issue, but the Commission noted that the legislative history clearly indicated that 10XXX access should be universally available in the future. The Commission concluded that "during the period of transition to the eventual use of such [new] equipment by all aggregators, 10XXX access should be available to the extent possible." The Commission still views this conclusion as beneficial to consumers and as consistent with, though not required by, the statutory provision regarding the 10XXX capabilities of new equipment.

7. In addition, this petitioner argues that not all aggregators schedule their equipment replacement according to the Internal Revenue Service (IRS) five-year depreciation schedule⁶ and that it is therefore unreasonable to base the unblocking requirements on that schedule. Given the IRS schedule, the Commission thinks it reasonable to conclude that most aggregators who do not fall into the other 10XXX unblocking categories will depreciate their equipment over the prescribed period and can then be expected to unblock without undue burden, even if equipment replacement is necessary. The long phased-in unblocking period that has been adopted affords aggregators, carriers, and equipment manufacturers considerable time to develop economical methods for unblocking 10XXX access that do not subject aggregators to undue risk of fraud. While the Commission accepts the contention that not all aggregators have incentives to follow the IRS schedule, the Commission cannot allow the judgments of individual aggregators to deter it from its primary goal and statutory duty in this proceeding: The

protection of the consumer's right to choose among the available operator services. Further, any categorical exception to the unblocking provisions for non-profit aggregators, as requested by the petitioner, would require the Commission to determine, *inter alia*, the proper definition of "non-profit," whether the exception should apply to all or only some non-profit aggregators, and whether the revenues recovered by such aggregators from their phone systems should affect their unblocking obligations. The record currently before the Commission does not provide a sufficient basis for addressing such issues. The Commission also notes that it is now considering whether to adopt a "billed party preference" method of providing access to operator services.⁷ If such a scheme were adopted, the Commission might be open to arguments that it should reconsider the balance it has struck in favor of requiring 10XXX unblocking within five years. In light of these considerations, the Commission declines at this time to alter its reliance on the IRS depreciation schedule as a basis for the final 10XXX unblocking deadline. The Commission is not averse, however, to entertaining additional arguments and evidence that are relevant to the issue of whether particular non-profit aggregators should be treated differently from other aggregators. The Commission also has the discretion to waive its unblocking rules where particular facts, such as undue hardship or low toll revenues, would make strict compliance inconsistent with the public interest.⁸ In appropriate cases, therefore, the Commission is willing to consider requests from non-profit aggregators for waivers of the 10XXX unblocking requirements.

8. Finally, the Commission disagrees with the contention that the 10XXX unblocking requirements effect an unconstitutional "taking" without compensation under the Fifth Amendment of the United States Constitution. In scrutinizing government regulations under the Fifth Amendment, the Supreme Court has said that "several factors are particularly significant—the economic impact of the regulation, the extent to which it interferes with investment-backed expectations, and the character of the

⁵ The Commission has explicitly allowed blocking of 10XXX dialing sequences that always result in billing to the originating phone. 47 CFR 64.704(c)(6). This provision does not, however, exempt payphones employing store-and-forward devices from the unblocking requirements, although these phones may allow operator service calls that are, in a sense, billed to the originating phone. The Commission has made a minor modification in § 64.704(c)(6) to clarify this obligation.

⁶ See I.R.C. 168(e), (f).

⁷ See Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77; Notice of Proposed Rule Making, 7 FCC Rcd 3027 (1992).

⁸ *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C.Cir. 1969); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C.Cir. 1990); 47 C.F.R. § 1.3 (must show "good cause" for waiver).

governmental action."⁹ While a "taking" may be more readily found when the action can be characterized as a "physical invasion," the Court has "often upheld substantial regulation of an owner's use of his own property where deemed necessary to promote the public interest."¹⁰ The Court has generally distinguished physical invasion of property from regulation that "merely restricts the use of property."¹¹ Applying these factors, the Commission finds that no unconstitutional taking occurs under the 10XXX unblocking requirements. The economic impact of compliance with the new rules will be modest because the Commission has set a cost limit of \$15.00 per line for equipment modifications during the first eighteen months of the unblocking period. Any non-payphone aggregators who cannot unblock 10XXX access within this cost limit will be able to use their equipment for the applicable IRS depreciation period. This will enable aggregators to recover fully their capital and, thus, allow full satisfaction of their reasonable investment-backed expectations before more extensive modification or equipment replacement is required. Further, there is no question of a physical appropriation of property under these rules. Instead, these requirements merely restrict uses of aggregator equipment that Congress and the Commission have deemed to be contrary to the public interest. Acting pursuant to a statutory provision, the Commission has adopted rules that prevent aggregators from using their equipment to impair consumers' freedom of choice in the operator services marketplace. These requirements are "reasonably adapted" to promote the public interest and the purpose of the Act by ensuring that consumers can reach their OSPs of choice.¹² As for the argument that these requirements are for the private benefit of AT&T, the Commission notes the uncontested fact that several other OSPs also employ the 10XXX access method. In any event, the 10XXX unblocking requirements are intended to benefit consumers, with any benefits to OSPs being merely incidental.

2. Local Exchange Carrier Blocking and Screening Services

9. Upon reconsideration of this issue, the Commission concludes that it should require local exchange carriers (LECs) to offer certain blocking and screening services. While it is still the Commission's view that both the plain language of section 226(g) and its legislative history leave the matter of mandatory LEC services wholly within its discretion, the Commission is now persuaded that the usefulness of these services in preventing 10XXX fraud outweighs any uncertainties associated with them. The Commission recognized the value of these services in its original decision but concluded that uncertainties regarding the cost and timing of the services' implementation, as well as the demand for them, counseled against requiring them. In the earlier portions of this proceeding, however, cost estimates and arguments regarding demand and timing were directed at proposals involving an interrelated and potentially complex menu of LEC services, such as the "split 1+" blocking feature developed for the LECs by AT&T, which blocked both domestic and international dialing sequences. As one petitioner points out, the arguments and data that the Commission initially examined were relevant to such complex proposals but not to a more limited array of services. The Commission therefore finds that its concerns about requiring blocking and screening services can be satisfied by limiting the scope of the mandatory services and by requiring services that, in certain jurisdictions, have already been implemented and are otherwise feasible. The record shows, for example, that LECs have implemented screening services on a wide basis. Further, blocking services limited to international calls have been economically implemented in several local exchange areas. The fact that these services are already available in some areas indicates that costs of implementation and uncertainties about demand are not major obstacles to their effective deployment. Hence, the Commission orders the LECs to offer, at a minimum, the limited blocking and screening services described herein. The availability of blocking and screening services will ensure that aggregators can provide consumers with complete access to all OSPs without increasing their exposure to fraudulent calling.

10. *Domestic blocking services.* Instead of requiring a combined domestic/international blocking feature such as AT&T's "split 1+," two petitioners propose that the Commission

require LECs to offer separate, more flexible domestic and international blocking services. Under this proposal, one service would block domestic direct-dialed sequences (1+ and 10XXX-1+), and another service would block international direct-dialed sequences (011+ and 10XXX-011+). As contemplated by these petitioners, an aggregator could order these services either separately or together. The Commission believes that equipment-based selective processing, which may be accomplished through the reprogramming of PBXs or payphones or through the addition of adjunct devices, should be able to control domestic direct-dialed sequences. The record shows that the number of digits in the domestic sequences appears to be within the data handling capacities of much aggregator equipment or the adjunct devices that may be employed by aggregators. Because equipment-based selective processing may well be a desirable and practical option for many aggregators, significant questions still exist with regard to the demand for domestic blocking services provided at LEC central offices, which would duplicate the processing capabilities of much aggregator equipment. The Commission therefore declines to require domestic blocking services at this time.¹³

11. *International blocking services.* The Commission finds it appropriate, however, to require LECs to offer discrete, limited services that block only international direct-dialed sequences (011+ and 10XXX-011+). International blocking may pose a problem for aggregator equipment in some cases because the international direct-dialed sequences, such as 10XXX-011+, include a zero, as do the domestic operator-assisted sequences, such as 10XXX-0+, which must be unblocked under the rules. Because of this similarity, equipment-based blocking mechanisms would have to distinguish the digits beyond the zero, which may exceed the data handling capacities of some aggregator equipment. Such limitations may make LEC international blocking services not only desirable to some aggregators, but essential. Moreover, fraudulent international

⁹ *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 432 (1982) (*Loretto*); *accord* *Penn. Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978).

¹⁰ *Loretto*, 458 U.S. at 426.

¹¹ *Id.* at 430.

¹² See *Trinity Methodist Church, South v. Federal Radio Comm'n*, 62 F.2d 850, 853 (D.C.Cir. 1932) (to be constitutional, requirements must be reasonably adapted to secure the purposes and objects of regulation); see also *Loretto*, 458 U.S. at 426 (regulation of property often upheld where deemed necessary to promote the public interest).

¹³ The record shows that international toll fraud seems to be by far the major source of fraud for unblocked equipment. The measures adopted herein should allow aggregators to protect themselves against such fraud. The Commission will, however, continue to monitor fraud involving domestic calls. If domestic fraud resulting from 10XXX unblocking becomes a greater problem in the future, the Commission would consider taking further steps to help aggregators protect themselves against such fraud.

calling appears to be a problem of greater magnitude than fraudulent domestic calling. Hence, the level of demand for such services is likely to justify their implementation. Further, these services already appear to have been economically implemented in many local exchange areas, where they are offered to subscribers at a rate of \$1.00 to \$4.00 per month. Thus, judging from the record, neither cost nor demand appears to pose significant problems for implementing international blocking services, especially because such services will not have to be coupled with domestic blocking services. For the foregoing reasons, the Commission directs local exchange carriers to offer in locations where technically feasible, within six months, tariffed services that will block direct-dialed international calls.¹⁴ Because these services will be limited to international blocking, which the record shows to be feasible, if not already implemented, in many local exchange areas, the Commission does not think it will be burdensome or prohibitively expensive to implement such services within the six-month period it has prescribed.¹⁵

12. Screening services. A petitioner has also requested that the Commission require the LECs to offer screening services. These services, such as originating line screening and billed number screening, would inform OSPs of any restrictions associated with the line to which a caller is attempting to bill a call. According to the petitioner, a caller can dial a 10XXX-0- sequence, wait for a live operator, and then ask that the call be billed to the originating line, which may not be a valid billing option for a caller at an aggregator phone. Without the availability of screening services, the OSP may have no way of determining what billing restrictions apply to that line. This situation could result in aggregators being fraudulently billed in some cases and in consumers being improperly denied access in other cases in which they do have proper billing authorization. The Commission believes that originating line screening and billed number screening could prevent this scenario from occurring. As already

noted, many of the earlier concerns about requiring LEC services, as well as the parties' arguments and data, were directed at proposals for an interrelated menu of blocking services. Upon further consideration of this issue, the Commission concludes that requiring very specific screening services would not raise concerns about excessive cost or lack of demand. Screening services have, according to the record, been widely offered by LECs, thus indicating that cost and subscriber demand have favored the implementation of such services. Given that these services may provide a useful fraud control mechanism without posing problems associated with cost and demand, the Commission directs local exchange carriers to offer in locations where technically feasible, within six months, tariffed originating line and billed number screening services that indicate to operator service providers any billing restrictions on lines to which a caller may seek to bill a call. Because LECs already have extensive experience with these types of central office screening, the Commission finds the six-month implementation period to be adequate.

13. Deferral of unblocking pending implementation. In addition, a petitioner has requested that any required unblocking of 10XXX dialing be deferred until adequate LEC services are in place. The petitioner argues that because such services are essential to the prevention of fraudulent 10XXX calling, their implementation must be a precondition to any unblocking requirement. As already discussed, the Commission agrees that LEC services may play an important role in preventing toll fraud associated with the use of 10XXX dialing sequences. Because the toll fraud problems that can be prevented with the mandatory blocking and screening services may not be susceptible to control through other means available to aggregators, the Commission finds that it must defer the unblocking deadlines imposed by sections 64.704(c) (1), (2), and (3) of the rules,¹⁶ which fall within the six-month deployment period for the LEC services. In the absence of such a deferral, aggregators could be exposed unduly to certain types of toll fraud while the mandatory LEC services are being implemented. Hence, the Commission views this deferral, like the requirement that LEC services be

offered, as part of the statutory duty under 47 U.S.C. 226(g) to require "such actions or measures as are necessary to ensure that aggregators are not exposed to undue risk of fraud."

14. Because the Commission believes it necessary that aggregators be able to take full advantage of the fraud prevention capabilities of the mandatory LEC services, the Commission is making the unblocking schedule dependent upon the actual implementation date of these LEC services. If the mandatory LEC services are now available, aggregators subject to Sections 64.704(c) (1), (2), and (3) shall be required to unblock 10XXX dialing sequences within thirty days of the release of the Order. The Commission believes this thirty-day period sufficient because aggregators will already have had six months since the rules became effective to plan for unblocking. If the mandatory LEC services are not now available but become available before the six-month deadline for their deployment, aggregators subject to sections 64.704(c) (1), (2), and (3) shall be required to unblock within thirty days of the deployment of the services. In all other cases, aggregators subject to sections 64.704(c) (1), (2), and (3) shall unblock 10XXX dialing sequences no later than six months from the release of the Order, by which time all mandatory LEC services must be deployed.

3. Relief from Liability for Fraudulent 10XXX Calls

15. Petitioners have also sought reconsideration of the Commission's decision not to address the issue of whether aggregators who subscribe to LEC blocking or screening services should be relieved of liability for fraudulent 10XXX calls. To answer the question of whether relief from toll fraud liability is properly before the Commission in this proceeding, it must be determined if such an action would, as stated in section 226(g) of the Act, "ensure that aggregators are not exposed to undue risk of fraud." The Commission believes that the actions taken herein should ensure that aggregators are able to protect against exposure to undue risk of fraud when they unblock their equipment. The issue of which party should be held liable for costs associated with any fraud that does occur, however, is beyond the scope of this proceeding. The Commission thinks that the determinative statutory provision, section 226(g), refers to actions that would prevent fraud from occurring in the first place, such as selective processing of 10XXX dialing sequences.

¹⁴ LECs shall file tariffs for these services with this Commission.

¹⁵ The Commission declines, however, to require the LECs to offer a "PIC-none" option, under which aggregators can indicate to the LEC that there is no presubscribed "primary interexchange carrier" that a caller can reach without dialing an access code. This option is apparently already available in some areas. Because the record in this proceeding contains virtually no discussion of PIC-none, the Commission cannot require this option.

¹⁶ See 47 CFR 64.704(c) (1)-(3) (unblocking within six months of effective date of rules for payphones and for aggregator equipment that currently has selective 10XXX capabilities; unblocking immediately upon installation for aggregator equipment manufactured or imported on or after April 17, 1992). The original deadline for compliance with subsections (1) and (2) was March 16, 1992.

Further, the Commission may be required to examine relevant tariff provisions in order to resolve liability issues. Hence, any question of toll fraud liability would be more appropriately addressed in a section 208 complaint proceeding, in response to a petition for declaratory ruling, or in a more general proceeding focused on toll fraud liability issues.¹⁷

4. Payphone Unblocking Schedule

16. The Commission declines to revise its original determination that all payphones should be subject to a single unblocking schedule rather than the phased unblocking periods applicable to other aggregators.¹⁸ In the Report and Order, the Commission determined that all payphones should be unblocked within a single six-month period, rather than within the potentially longer, phased time periods applicable to other aggregators, because payphone owners, unlike other aggregators, "are primarily engaged in the business of providing telephone service." the petitioner has offered no new or persuasive evidence to support its contention that "many" payphone owners are not primarily engaged in the provision of telephone service. On the contrary, the Commission thinks it logical to conclude that most payphone owners, unlike other aggregators, have invested in their telephone equipment primarily to provide a source of revenue distinct from any other business in which they may be engaged. This being the case, these payphone owners will have an incentive to remain competitive by upgrading their equipment regularly, thus making modifications for 10XXX unblocking less burdensome. Further, which it is undoubtedly true that some payphone owners are primarily engaged in another business, it is not necessarily true that even these aggregators are earning insufficient revenue from their payphones to cover the costs of 10XXX unblocking. In addition, although the time between generations of equipment does not represent the useful life of the equipment, the Commission views the relatively short time between generations of payphone equipment as an indication that payphones will

normally be replaced on a frequent basis. The record did not support a similar conclusion with regard to non-payphone aggregator equipment.

5. Proposed Aggregator Reports

17. One petitioner asks that the Commission revise its 10XXX unblocking rules to require aggregators to report their unblocking plans to the Commission. In the Report and Order, the Commission said that "[a]ggregators need not report to the Commission after making [their unblocking] determination but must simply unblock 10XXX access by the appropriate deadline." The Commission rejects the proposal that aggregators file unblocking reports because such reports would be an administrative burden to the Commission and a financial burden to aggregators, without any commensurate public benefit. There is no reason to conclude that in the absence of the proposed reports, the Commission's enforcement procedures will be unable to ensure compliance with the unblocking rules, which the Commission plans to enforce vigorously.

6. Matters Raised for Clarification

18. The parties have sought clarification of several matters, which will be addressed briefly. For the most part, there was little responsive comment on these issues.

19. First, a petitioner has asked whether, in calculating per line modification costs under the \$15.00 per line cost threshold, lines to non-aggregator phones that are part of the same system should be included in the calculation.¹⁹ The Commission thinks that non-aggregator lines should be excluded from this calculation. These rules concern only aggregator phones and, as such, non-aggregator lines are irrelevant to the required per line calculation.

20. Next, a petitioner asks whether in non-equal access areas of the country, where LEC switches cannot process 10XXX codes, aggregators must take steps to unblock 10XXX access. Because 10XXX access simply cannot be used in such areas, the Commission clarifies the 10XXX unblocking rules to exempt aggregators in non-equal access areas on a temporary basis. Aggregators in those areas, however, shall be held responsible for monitoring any future conversion to equal access. Once aggregators are notified of such a

conversion by their LEC, the generic time periods of the original unblocking schedule will begin to run, and aggregators shall be required to comply with the appropriate deadline as measured from the notification date.²⁰

21. A petitioner has also asked the Commission to clarify the standards that would apply to requests for waivers of the 10XXX unblocking rules. The petitioner suggests that the Commission grant an exemption to any aggregator who has received a waiver of comparable state regulations. The Commission declines to clarify its waiver standards as requested. As stated in the Report and Order, "the myriad types of aggregator equipment and the variable and numerous aggregator situations [pose] significant problems for the formulation of meaningful generalized waiver standards applicable to [the] 10XXX unblocking requirements." The Commission concluded that "the many permutations involving aggregators and their equipment" required it to consider waiver requests only on a case-by-case basis under the appropriate legal standards.²¹ While the factors considered by a state commission could be presented to the Commission as the basis for a waiver request, the Commission will exercise its discretion independently in enforcing the rules, especially when the rules have a specific statutory basis.

22. Finally, a petitioner asks that the Commission clarify the 10XXX unblocking rules to allow payphones that currently lack selective 10XXX capabilities to translate a 10XXX dialing sequence into the appropriate carrier's 800 or 950 access number. Under this proposal, when a caller dials a carrier's 10XXX code, the payphone would apparently be programmed to re-dial and outpulse that carrier's 800 or 950 number automatically. The Commission rejects this proposal. As explained above and in the Report and Order, 10XXX access has advantages for the consumer that the consumer should, as a matter of individual judgment, be able to choose. Similarly, billing options may not be identical for all three access

¹⁷ The Commission is well aware of the liability disputes that arise from fraudulent calling and is committed to moving forward with consumer education efforts, see Public Notice, "Consumer Alert: Telecommunications Toll Fraud," DA 92-728 (released June 9, 1992), as well as with proceedings to establish, in a clear and fair manner, responsibility for losses incurred through fraudulent calling.

¹⁸ The schedule for payphone unblocking shall, however, be deferred until the deployment of mandatory LEC services, as described in section 2, *supra*.

¹⁹ For example, a single private branch exchange ("PBX") could serve both aggregator phones, such as hotel room phones, and non-aggregator phones, such as those used only by hotel employees for business purposes.

²⁰ For example, payphone aggregators will be required to unblock 10XXX access within six months of the date on which they are notified that their local exchange area is being converted to equal access.

²¹ Rules may be waived if there is "good cause" to do so. See 47 CFR 1.3. The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. *WATT Radio v. FCC*, 4189 F.2d 1153, 1159 (D.C.Cir. 1989); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C.Cir. 1990).

methods, and the consumer should be permitted to pursue the desired options associated with a particular access method. While the Commission is not unmindful of the financial aspects of 10XXX unblocking, the primary concern in this proceeding is to enhance consumer choice.

B. 800 and 950 Access

1. Whether 800 or 950 Access Must Be Established

23. A petitioner argues that the Commission should reconsider its decision to require all OSPs to establish an 800 or 950 access number. The petitioner, however, has offered no new arguments or evidence on this issue. The Commission therefore declines to eliminate the requirement that all OSPs establish an 800 or 950 access number. Nothing offered on reconsideration undermines the Commission's original conclusion that the establishment of 800 or 950 access by all OSPs is necessary to provide an access method for consumers at aggregator locations where 10XXX access is temporarily unavailable during the six-year transition to full unblocking. * * * Moreover, the use of 10XXX access is not technically possible in on-equal access areas of the country. If [the Commission] fail[s] to provide a means of access for consumers in either situation, [such] policies would leave a significant number of consumers without access to all OSPs. This result would clearly be inconsistent with the considerations underlying the [Act].

The petitioner has presented no persuasive basis for its argument that only a limited number of consumers will find themselves in either of the situations just described, where 10XXX access is unavailable. Regardless of the number of such consumers, however, the Commission does not view the proposed 0-transfer services as providing a broad solution to their access needs under the Act.²² While such services may be useful in some situations, they do not appear to offer the potential for automated capabilities associated with the 800 and 950 access numbers currently offered by some OSPs. Further, the Commission has already given full consideration to virtually identical arguments regarding the alleged costs and service degradation associated with the 800 and 950 access methods. Even assuming the accuracy of the petitioner's predicted implementation and operating costs for a new 800 access

method, the Commission thinks it likely that these costs will be recovered. The costs will, at least in part, be offset by the revenues derived from calls that would be blocked in the absence of such access. In addition, costs can be recovered from rates or charges gauged to the cost of providing the new access method. If this new access method actually proves to be more costly to operate, the petitioner can more vigorously market 10XXX access where it is available.²³

2. The Scope of 800 or 950 Access

24. A petitioner also argues that if the Commission retains the 800/950 requirement, it should "delineate specifically what operator services must be offered through this form of access." The petitioner contends that callers will be confused if all billing options are not offered through each OSP's 800 or 950 number and that OSPs should be required to offer "all of their operator-assisted and operator-handled services to customers without regard to the form of access used by the end user to reach that OSP." The Commission concludes that the petitioner's proposal is beyond the scope of this proceeding. The purpose of this rule making proceeding was to carry out the requirements of section 226(e) of the Act. Nothing in that section or its legislative history suggests that the Commission should go beyond consideration of the access methods that are necessary.

3. Store-and-Forward Operator Service Providers

25. Petitions have been filed requesting waiver of the 800/950 number requirement for OSPs that provide operator services via "store-and-forward" (S&F) devices located within payphones. S&F devices perform operator assistance functions, such as the collection of billing information, inside the payphone itself, without the involvement of centralized operator

service facilities at a different location. Because the 800/950 number requirement, 47 CFR 64.704(d), applies to "all providers of operator services," this rule would require S&F OSPs as well as facility-based OSPs to establish 800 or 950 access. One petitioner maintains that the purpose of the 800/950 requirement is to ensure that OSPs can be reached by their subscribers from any location. According to the petitioner, however, S&F devices are not equipped to handle calls originating outside the payphone where the device is installed. Further, consumers who use these services do not have preestablished accounts with such OSPs. These services are not represented to be available anywhere other than at the location of the payphone and do not employ access methods such as 10XXX.

26. Although this issue was raised in petitions for waiver, the Commission believes it is more appropriate to address this issue in the context of the current rule making proceeding. Accordingly, the Commission will reconsider the application of the 800/950 requirement to S&F OSPs on its own motion.²⁴ In the Report and Order, the Commission agreed "in principle that [S&F] OSPs should not have to establish 800 or 950 access." But the Commission said that it would be more appropriate to consider waiver requests so that the Commission could examine the individual circumstances of all S&F OSPs, such as hotels that employ this technology through their PBXs, and not simply payphones. Upon reconsideration, however, the Commission now concludes that this issue can be addressed most efficiently in a collective rather than individual context. The description contained in the petitions indicates that S&F OSPs form a discrete category among those entities providing operator services and can effectively be distinguished from those facility-based OSPs that offer service to callers not located on their premises. The Commission therefore applies conclusively its original opinion that S&F OSPs who offer operator services only where their S&F devices are physically located should not be required to establish 800 or 950 access numbers. The Commission has revised the text of § 64.704(d) as set out below.²⁵ In keeping with its earlier

²² It has come to the Commission's attention that AT&T has offered 800 access to its operator services through its general customer service 800 number, which contains a menu of other options in addition to a lengthy explanation of the operator service option. When § 64.704(d) was adopted, the Commission intended that each OSP implement an 800 or 950 access number that would serve consumers efficiently and promptly. The Commission is monitoring AT&T's 800 access method, as well as other 800 and 950 access numbers, to ensure that consumers are being served as intended. See Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Phase II: Order, DA 92-722, paras. 3-4 (Com. Car. Bur. released June 5, 1992) (requiring certain OSPs to file, *inter alia*, information regarding 800 and 950 access methods). In any case in which they are not, the Commission shall consider whether to take further action to require changes in access methods.

²⁴ Hence, the Commission dismisses as moot the petitions that request such waivers.

²⁵ For OSPs who do not employ S&F technology, however, the Commission did not revise the deadline for compliance with this rule. Compliance was required no later than six months from the original effective date of the rule.

²³ See 47 U.S.C. 2669(e)(1) (only 10XXX, 800, and 950 access methods are listed as potential solutions).

concerns, however, the Commission emphasizes that facility-based OSPs who provide operator services for callers who are not on their premises shall remain subject to § 64.704(d).²⁶ Further, all OSPs, including those employing S&F technology, must comply with all other applicable requirements imposed by the rules.

C. Compensation for "Subscriber 800" Calls

27. Finally, a petitioner asks the Commission to reconsider the determination that so-called "subscriber 800" calls are outside of the scope of the compensation scheme being considered in this proceeding. In the initial stages of this proceeding, the petitioner argued that all calls initiated via an 800 number should be compensable under any compensation plan that might be adopted, including calls that go directly to a subscriber that is not an OSP. The Commission disagreed, citing the legislative history that specified that it should "consider the need to prescribe compensation for independent payphone owners for calls made using a carrier-specific access code." The Commission said that an 800 call directly to a subscriber did not involve a "carrier-specific access code." The Commission determined that the 800 number in question is that of the end user or subscriber and not a carrier, and that such a call did not involve an "access code," as defined by the Act and the Commission's rules. Because of the clear legislative history underlying the statutory compensation provision, the Commission declines to revise the earlier determination. The petitioner fails to reconcile its arguments with the explicit statement of congressional intent that prescribed compensation should concern only those calls "made using a carrier-specific access code." Under the Act and the rules, an "access code" is a "sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence."²⁷ A subscriber 800 number does not connect the caller with an OSP. Instead, it connects the caller directly to the called subscriber.²⁸ Given this obvious inconsistency with the legislative history of the Act's compensation provision, the Commission cannot find that subscriber 800 calls fall within the scope of any

compensation scheme that may be prescribed under the Act.

III. Conclusion

28. In the Order, the Commission has declined to reconsider its rules under which aggregators must, according to a specified schedule, allow 10XXX access to operator service providers. Some aspects of these rules have been clarified, however. To ensure that aggregators are not exposed to undue risk of fraud associated with 10XXX access, the Commission has reconsidered its earlier decision regarding LEC blocking and screening services and has decided to require LECs to offer specified services within six months. The Commission has deferred certain unblocking deadlines pending deployment of these services. The Commission has also declined to reconsider its original determination regarding mandatory 800 or 950 access numbers for all OSPs, except that it has exempted store-and-forward OSPs from this requirement. Finally, the Commission has reaffirmed its initial decision regarding compensation for subscriber 800 calls.

IV. Ordering Clauses

29. Accordingly, *It is ordered*, pursuant to sections 1, 4(i), 4(j), 201-205, and 226 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 226, that the petitions for reconsideration, partial reconsideration, and/or clarification filed in this proceeding by the American Council on Education and the National Association of College and University Business Officers, the American Public Communications Council, the American Telephone and Telegraph Co., the Association of College and University Telecommunications Administrators, and the North American Telecommunications Association *Are Denied*, except as provided herein.

30. *It is further ordered*, Pursuant to Sections 1, 4(i), 4(j), 201-205, and 226, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-205, that part 64 of the Commission's rules, 47 CFR Part 64, *Is Amended* as set forth in Rule Changes below, effective 30 days after publication in the Federal Register.

31. *It is further ordered* That the stay imposed in Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Order, 7 FCC Rcd 2146 (1992), is lifted effective six months from the release of the Order on Reconsideration, subject to the unblocking schedule set forth paragraph 14, *supra*.

32. *It is further ordered* That all local exchange carriers shall offer, in locations where technically feasible, within six months of the release of the Order on Reconsideration, tariffed services that block international direct-dialed calls as described herein. Local exchange carriers shall file with the Commission tariffs for these services on statutory notice, to be effective no later than six months from the release of the Order on Reconsideration.

33. *It is further ordered* That all local exchange carriers shall offer, in locations where technically feasible, within six months of the release of the Order on Reconsideration, tariffed services that indicate to operator service providers any billing restrictions on lines to which a caller may seek to bill a call.

34. *It is further ordered* That the petitions for waiver of 47 CFR 64.704(d) filed by the American Public Communications Council, Advanced Payphone Systems, Inc., Comtel Computer Corporation, Indiana Telcom Corporation, MIS Associates, Inc., and Public Communications Associates Ltd. *Are Dismissed*.

35. *It is further ordered* That the Conditional Request for Permission to Exceed Page Limit filed by the American Public Communications Council on November 27, 1991, *Is Granted*.

List of Subjects in 47 CFR Part 64

Communications Common Carriers, Telephone.

Federal Communications Commission, Donna R. Searcy, Secretary.

Rule Changes

Part 64 of title 47 of the Code of Federal Regulations is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 48 Stat. 1070, as amended, 1077, 47 U.S.C. 201, 218, 226, unless otherwise noted.

2. Section 64.704 is amended by revising paragraphs (c)(6) and (d) to read as follows:

§ 64.704 Call blocking prohibited.

• • • • •
(c) • • •

(6) This paragraph does not apply to the use by consumers of equal access code dialing sequences that result in billing to the originating telephone.

²⁶ As a petitioner has noted, consumer access to non-S&F OSPs will be unaffected by this ruling.

²⁷ 47 U.S.C. 226(a)(1); 47 CFR 64.709(a).

²⁸ Hence, the caller cannot choose among the available OSPs but must instead use whichever OSP the subscriber has chosen.

(d) All providers of operator services, except those employing a store-and-forward device that serves only consumers at the location of the device, shall establish an "800" or "950" access code number within six (6) months of the effective date of this paragraph.

[FR Doc. 92-18237 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 90-134; FCC 92-314]

Marine Services Rules; Revision of the General Exemption for Small Passenger Vessels Operated on Domestic Voyages

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This Memorandum Opinion and Order amends part 80 to establish a new category for general exemptions from radiotelegraph equipment carriage requirements of 100-200 nautical miles from the nearest land for certain U.S. passenger vessels of less than 100 gross tons. This action is in response to a request from the Offshore Marine Service Association. The new exemption category will ensure adequate safety communications are maintained and reduce the financial, legal and administrative burdens imposed on the maritime public by eliminating the need for many vessel operators to apply for individual radiotelegraph exemptions.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: James A. Shaffer, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632-7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 90-134, adopted July 7, 1992, and released July 21, 1992. The complete text of the Memorandum Opinion and Order, including Appendices, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Summary of Memorandum Opinion and Order

1. The Commission has amended its Maritime Service Rules (Part 80) to establish a general exemption category for certain U.S. passenger vessels of less than 100 gross tons that operate at distances of 100-200 nautical miles and more than 200 nautical miles from the nearest land. All U.S. passenger vessels navigated in the open sea that carry more than 12 passengers are required to be equipped with a manual Morse code radiotelegraph station. The law permits the Commission to exempt from this provision small passenger vessels not operating on international voyages. The general exemption previously had been limited to ships operating within 100 nautical miles of the nearest land.

2. The Report and Order in this proceeding added a new exemption category permitting small passenger vessels to operate beyond 100 nautical miles from land, provided they carry specified radio equipment. Although the rulemaking notice in this proceeding proposed adding two new exemption categories for vessels: one new category for vessels operated 100-200 nautical miles from land, and another for vessels operated 200-500 nautical miles from land, the Commission ultimately adopted the suggestion of commenters that a single exemption be made for all voyages beyond 100 nautical miles, with no mileage restrictions, provided the vessels are equipped with specific radio equipment. The Offshore Marine Service Association (OMSA) asked the Commission to reconsider its decision and adopt the equipment requirements and mileage limitations originally proposed.

3. The Commission agreed with OMSA that adequate safety communications capability can be ensured for the mileage category of 100-200 nautical miles without requiring all the equipment necessary for vessels operating on extended open ocean routes beyond 200 nautical miles from the nearest land. The Commission noted that the U.S. Coast Guard has regulations for vessels that only operate on voyages up to 200 nautical miles from the nearest land and did not oppose the creation of such a category.

Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), see 5 U.S.C. § 604, our final analysis is as follows:

Need for, and Objectives of, This Action

5. This action pertains to U.S. small passenger vessels operated on domestic

voyages. For such vessels, the action establishes a general exemption category of 100-200 nautical miles from the nearest land contained in the general exemption from radiotelegraph requirements, thus the vessels may operate without first having to obtain formal individual exemptions from the Commission. This action establishes a tiered scheme of radiocommunications equipment requirements, with additional equipment required at greater distances from land. This action can ensure that the vessels carry adequate safety communications equipment, and can help avoid unnecessary administrative procedures for both licensees and the Commission.

Discussion of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

6. The commenters generally agree that a revised general exemption from the radiotelegraph equipment requirement is a reasonable way to eliminate an unnecessary and costly administrative burden on small passenger vessel operators. The Commission agrees, and we note that any impact of this action on small passenger vessel operators, some of whom are small entities, will be to lessen the cost of doing business. The equipment required of vessels under the revised general exemption will be the same as the equipment that would be required under individual exemptions.

Significant Alternatives Considered and Rejected

7. The Commission did not reject any alternative designed to minimize the economic impact of the amended rules on small entities.

Ordering Clauses

8. In view of the foregoing and pursuant to the authority contained in sections 4(i), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 405, and 1.429(i) of the Commission's Rules, 47 CFR 1.429(i). *It is ordered* That the Petition for Reconsideration filed by OMSA, and the Petition for Partial Reconsideration filed by the Coast Guard *Are granted* as indicated herein and *Are denied* in all other respects. *It is further ordered* That the Request for Stay filed by OMSA *Is dismissed as moot*.

9. *It is further ordered* That pursuant to the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), part 80 of the Commission's Rules

Is Amended as set forth in the appendix below effective on September 3, 1992.

10. *It is further ordered* That a copy of this Memorandum Opinion and Order will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

11. *It is further ordered* That this proceeding *Is terminated*.

List of Subjects in 47 CFR Part 80

Communications equipment, Radio.
Federal Communications Commission.
Donna R. Searcy,
Secretary.

Final Rule

Part 80 of chapter I of title 47 of Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1084–1088, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. In § 80.905, paragraphs (a) (2) and (3) are revised, and new paragraph (a)(4) is added to read as follows:

§ 80.905 Vessel radio equipment.

(a) * * *

(2) Vessels operated beyond the 20 nautical mile limitation specified in paragraph (a)(1) of this section, but not more than 100 nautical miles from the nearest land, must be equipped with a medium frequency transmitter capable of transmitting J3E emission and a receiver capable of reception of J3E emission within the band 1710 to 2850 kHz, in addition to the VHF radiotelephone installation required by paragraph (a)(1) of this section. The medium frequency transmitter and receiver must be capable of operation on 2670 kHz.

(3) Vessels operated more than 100 nautical miles but not more than 200 nautical miles from the nearest land must:

- (i) Be equipped with a VHF radiotelephone installation;
- (ii) Be equipped with an MF radiotelephone transmitter and receiver meeting the requirements of paragraph (a)(2) of this section; and
- (iii) Be equipped with either:
 - (A) a single sideband radiotelephone capable of operating on all distress and safety frequencies in the medium

frequency and high frequency bands listed in §§ 80.369 (a) and (b), on all the ship-to-shore calling frequencies in the high frequency bands listed in § 80.369(d), and on at least four of the automated mutual-assistance vessel rescue (AMVER) system HF duplex channels (this requirement may be met by the addition of such frequencies to the radiotelephone installation required by paragraph (a)(2) of this section); or

(B) if operated in an area within the coverage of an INMARSAT maritime mobile geostationary satellite in which continuous alerting is available, an INMARSAT ship earth station meeting the equipment authorization rules of parts 2 and 80 of this chapter;

(iv) Be equipped with a reserve power supply meeting the requirements of §§ 80.917(b), 80.919, and 80.921, and capable of powering the single sideband radiotelephone or the ship earth station (including associated peripheral equipment) required by paragraph (a)(3)(iii) of this section;

(v) Be equipped with a NAVTEX receiver conforming to the following performance standards: IMO Resolution A.525(13) and CCIR Recommendation 540;

(vi) Be equipped with a Category I, 406 MHz satellite emergency position-indicating radiobeacon (EPIRB) meeting the requirements of § 80.1061; and,

(vii) Participate in the AMVER system while engaged on any voyage where the vessel is navigated in the open sea for more than 24 hours. Copies of the AMVER Bulletin are available at: AMVER Maritime Relations (G-NRS-3/AMR), U.S. Coast Guard, Building 110, Box 26, Governor's Island, N.Y. 10004-5034, telephone number (212) 668-7764.

(4) Vessels operated more than 200 nautical miles from the nearest land must:

- (i) Be equipped with two VHF radiotelephone installations;
- (ii) Be equipped with an MF radiotelephone transmitter and receiver meeting the requirements of paragraph (a)(2) of this section;
- (iii) Be equipped with either:
 - (A) an independent single sideband radiotelephone capable of operating on all distress and safety frequencies in the medium frequency and high frequency bands listed in §§ 80.369(a) and (b), on all of the ship-to-shore calling frequencies in the high frequency bands listed in § 80.369(d), and on at least four of the automated mutual-assistance vessel rescue (AMVER) system HF duplex channels; or

(B) If operated in an area within the coverage of an INMARSAT maritime

mobile geostationary satellite in which continuous alerting is available, an INMARSAT ship earth station meeting the equipment authorization rules of Parts 2 and 80 of this Chapter;

(iv) Be equipped with a reserve power supply meeting the requirements of §§ 80.917(b), 80.919, and 80.921, and capable of powering the single sideband radiotelephone or the ship earth station (including associated peripheral equipment) required by paragraph (a)(4)(iii) of this section;

(v) Be equipped with a NAVTEX receiver conforming to the following performance standards: IMO Resolution A.525(13) and CCIR Recommendation 540;

(vi) Be equipped with a Category I, 406 MHz satellite emergency position-indicating radiobeacon (EPIRB) meeting the requirements of § 80.1061;

(vii) Be equipped with a radiotelephone distress frequency watch receiver meeting the requirements of § 80.269;

(viii) Be equipped with an automatic radiotelephone alarm signal generator meeting the requirements of § 80.221; and

(ix) Participate in the AMVER system while engaged on any voyage where the vessel is navigated in the open sea for more than 24 hours. Copies of the AMVER Bulletin are available at: AMVER Maritime Relations (G-NRS-3/AMR), U.S. Coast Guard, Building 110, Box 26, Governor's Island, N.Y. 10004-5034, telephone number (212) 668-7764.

* * * * *

3. Section 80.909 paragraph (b) is revised to read as follows:

§ 80.909 Radiotelephone transmitter.

* * * * *

(b) The single sideband radiotelephone must be capable of operating on maritime frequencies in the band 1710 to 27500 kHz with a peak envelope output power of at least 120 watts for J3E emission and H3E emission on 2182 kHz and J3E emission on the distress and safety frequencies listed in § 80.369(b). Single sideband radios installed on or before February 2, 1992, may be used until February 2, 1997, provided such radios are capable of operating on the frequencies listed in §§ 80.369 (a) and (b), and at least half of the frequencies listed in § 80.369(d).

* * * * *

[FR Doc. 92-18117 Filed 8-3-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-58; RM-7947]

Radio Broadcasting Services; East Brewton, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 239A to East Brewton, Alabama, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Escambia Creek Indian Broadcasting Company. See 57 FR 11458, April 3, 1992. Coordinates used for Channel 239A at East Brewton are 31-12-07 and 87-02-03. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process for Channel 239A at East Brewton should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-58, adopted July 15, 1992, and released July 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding East Brewton, Channel 239A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18461 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-406; RM-6745, RM-7255]

Radio Broadcasting Services; Grenada, Artesia and Okolona, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the request for reconsideration, filed by Tenn-Tom Broadcasting Corp., to delete Channel 289A from Okolona, Mississippi. See 57 FR 01651 (1992). The Commission denies Tenn-Tom's request to modify the reference coordinates for Channel 287C3 at Okolona to specify the coordinates stated in its application to upgrade Station WWZQ-FM. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 89-406, adopted July 13, 1992, and released July 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Okolona, Channel 289A.

Federal Communications Commission.

Douglas W. Webbink,

Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18459 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-614 and 91-312; RM-7439, RM-7686, RM-7687, RM-7583]

Radio Broadcasting Services; Big Spring, Coahoma, Sterling City and Midland, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Three Card Enterprises, substitutes Channel 236C3 for Channel 236A at Midland, Texas, and modifies the construction permit of Station KQRX-FM to specify the higher powered channel (RM-7583). The proposal filed by David W. Wrinkle seeking the substitution of Channel 239C3 for Channel 237A at Big Spring, Texas, is dismissed. See 56 FR 56182, November 1, 1991. At the request of Ballard Broadcasting Company of Oklahoma, Inc., we allot Channel 232C3 to Big Spring, Texas (RM-7439). To accommodate the allotment of Channel 232C3 at Big Spring, the Commission also substitutes Channel 288A for vacant and unapplied for Channel 232A at Coahoma, Texas. At the request of Mark C. Nolte, we allot Channel 243C2 to Sterling City, Texas (RM-7686). At the request of David W. Wrinkle, we substitute Channel 240C3 for Channel 237A at Big Spring, Texas, and modify the license of Station KBST-FM to specify the higher powered (RM-7687). See 55 FR 52186, December 20, 1990, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

DATES: Effective September 11, 1992.

The window period for filing applications for Channel 243C2 at Sterling City, Texas, and Channel 232C3 at Big Spring, Texas, will open on September 14, 1992, and close on October 14, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-614 and MM Docket No. 91-312, adopted July 10, 1992, and released July 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy

Center, (202) 452-1422, 1990 M Street NW., Suite 640, Washington, DC 20036.

The following channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 232C3 can be allotted to Big Spring, Texas, without the imposition of a site restriction. The coordinates for Channel 232C3 at Big Spring are North Latitude 32-15-00 and West Longitude 101-28-24. The coordinates for Channel 288A at Coahoma are North Latitude 32-17-36 and West Longitude 101-18-18. Channel 240C3 can be substituted for Channel 237A at Big Spring with a site restriction of 3.1 kilometers (1.9 miles) northeast. The coordinates for Channel 240C3 at Big Spring are North Latitude 32-16-07 and West Longitude 101-26-57. Channel 236C3 can be allotted to Midland with a site restriction of 8.4 kilometers (5.2 miles) west to accommodate Three Card's desired transmitter site. The coordinates for Channel 236C3 at Midland are North Latitude 32-00-00 and West Longitude 102-10-00. Channel 243C2 can be allotted to Sterling City with a site restriction of 14.3 kilometers (8.9 miles) southwest to avoid a short-spacing to Station KXOX-FM, Channel 244A, Sweetwater, Texas. The coordinates for Channel 243C2 at Sterling City are North Latitude 31-44-08 and West Longitude 101-05-06. Mexican concurrence in each of the allotments has been received because all of the communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 237A and adding Channel 240C3 at Big Spring; by removing Channel 232A and adding Channel 288A at Coahoma; by removing Channel 236A and adding 236C3 at Midland; by adding Channel 232C3 at Big Spring, and by adding Sterling City, Channel 243C2.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18460 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 920516-2174]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule and interim final rule with request for comments.

SUMMARY: NMFS changes the directed-fishery and bycatch quotas for Atlantic swordfish, and the bycatch limits in the non-directed fisheries for Atlantic swordfish, in accordance with the framework procedure of the regulations under which the Atlantic swordfish fishery is managed. This rule establishes for Atlantic swordfish: (1) Directed-fishery quotas of 3.50 million pounds (1.59 million kg) for each of two semi-annual periods, each of which is divided into drift gillnet quotas of 47,583 pounds (21,584 kg) and longline and harpoon quotas of 3,452,417 pounds (1,566,066 kg), except that, for the semi-annual period July 1, 1992, through December 31, 1992, the directed-fishery quota for drift gillnets is adjusted to 62,866 pounds (28,516 kg); (2) an annual bycatch quota of 0.56 million pounds (0.25 million kg); and (3) a bycatch limit for vessels in the squid trawl fishery of five swordfish per trip. The adjusted directed-fishery quota for drift gillnets for July 1 through December 31, 1992, is issued as an interim final rule. The intent of this action is to protect the swordfish resource while allowing harvests of swordfish consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: Effective August 4, 1992, except that § 630.24(i) is effective from August 4, 1992, through December 31, 1992. Written comments on the adjusted directed-fishery quota for drift gillnets for July 1 through December 31, 1992, contained in § 630.24(i), must be received on or before August 19, 1992.

ADDRESSES: Comments on the adjusted directed-fishery quota for drift gillnets for July 1 through December 31, 1992, should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

NMFS reevaluated and proposed changes in the annual total allowable catch (TAC), the annual directed-fishery quota, the annual bycatch quota, and the bycatch limits in the non-directed fishery in the Atlantic swordfish fishery in accordance with the factors and procedures specified in 50 CFR 630.24(d). NMFS also reevaluated the special set-aside for harpoon gear, but did not propose any changes. The background and specifics of the proposed changes were published May 22, 1992 (57 FR 21761) and are not repeated here.

Comments and Responses

A total of four written comments were received, including comments from a private citizen, a representative of a commercial fisheries organization, representatives of a swordfish net association, and a captain of a fishing vessel.

Comment: The essence of the private citizen's comments on the proposed rule was that the increase in TAC is unnecessary and contrary to reasonable conservation and management, given the status of the stock, and that it negated the opportunity to exert leadership in the international management arena.

The comments from the representative of the commercial fisheries organization and the fishing vessel captain were essentially the same. Their main concern was that consistently conservative assumptions were used in calculating the proposed TAC. These commenters also: (1) Requested that the procedure for calculating the 1992 TAC be submitted to the ICCAT as a proposed procedure for calculating quotas for all nations harvesting in the Atlantic; (2) recommended that the range of potential TAC levels that could be considered consistent with the ICCAT recommendations be included in all regulatory documents—specific language was suggested; and (3) supported the five-fish bycatch trip limit for squid trawls.

All three of these commenters addressed a number of issues that were beyond the scope of the proposed rule.

Response: NMFS disagrees with the commenters' concerns about the 1992 TAC. In accordance with the regulatory procedure for evaluating and adjusting

annual swordfish quotas, NMFS convened a scientific review panel to obtain recommendations on the appropriate adjustments. The panel recommended selecting the 1992 TAC from the most likely range of U.S. allowable yield consistent with the ICCAT agreements. After conferring on the appropriate methodology, including appropriate assumptions, the panel recommended the most likely range of allowable yield. NMFS concurred with the panel's recommendations and selected a TAC of 7.56 million pounds (3.43 million kg) for 1992 from within the range. This value represents the median from 2,000 estimates, adjusted for potential bias in the terminal year stock size and resulting from the application of both relatively optimistic and pessimistic assumptions about the effectiveness of 1991 U.S. regulations. Given the range of estimates, both more conservative and more liberal TAC values could be considered consistent with the ICCAT recommendations. However, the median value of 7.56 million pounds is central to the most likely estimates resulting from the mixture of the optimistic and pessimistic assumption distributions of estimates. NMFS believes that the 1992 TAC is consistent with the ICCAT recommendations and the best scientific information available and that it represents a responsible U.S. position in keeping with existing mandates.

In response to the other comments by the commercial fisheries representative and vessel captain on the proposed rule, NMFS will submit the document describing the method applied for calculating the 1992 U.S. TAC to ICCAT's Standing Committee on Research and Statistics for consideration by the swordfish working group in September. Regarding the full range of TACs considered, NMFS did not incorporate this information in the regulations; however, it is contained in the review panel report that is a part of the administrative record and is available upon request. The recommended language pertaining to the range of TACs was not adopted, because NMFS believes the language in the review panel report reflects most accurately the consensus of the review panel and the position with which NMFS has concurred. NMFS concurs with the support for the squid trawl bycatch trip limit.

The comments addressing issues not contained in the proposed rule are beyond the scope of the proposed rule and are not addressed in this document.

Comment: Two representatives of a swordfish net association commented in

support of the proposed 7.56 million-pound (3.43 million kg) TAC. In addition, they objected to subdivision of the directed-fishery quota based on gear type; supported an experimental fishery; requested an annual drift gillnet quota rather than a semi-annual quota; and requested an increase in the drift gillnet quota based on new landings information.

Response: The comments related to an experimental fishery and the structuring of the quotas are beyond the scope of the proposed rule and are, therefore, not addressed in this document. The structure of the quotas was established in a previous rule, and experimental fisheries were not addressed in the proposed rule. NMFS concurs with the endorsement of the proposed TAC. NMFS will review all available data sources regarding historical drift gillnet landings. If additional landings are verified, that information will be considered during the annual procedure for reevaluating TAC and related quotas.

Changes From the Proposed Rule

Because the annual directed-fishery quotas are being revised almost at mid-year, adjustments are required to ensure that fishermen have an opportunity to harvest the 1992 TAC.

A directed-fishery quota for drift gillnets of 40,785 pounds (18,500 kg) was in effect from January 1 through June 30, 1992. That quota was projected to be reached on April 22, 1992, and the drift gillnet fishery was closed from April 23 through June 30, 1992 (57 FR 14361, April 20, 1992). Catch reports received since the closure indicate that actual catches by drift gillnets January 1 through April 22, 1992, totaled 32,300 pounds (14,651 kg). Accordingly, the entire annual drift gillnet quota implemented by this rule, 95,166 pounds (43,167 kg), less the amount caught prior to the closure, is established as the drift gillnet quota for the period July 1 through December 31, 1992, specifically, 62,866 pounds (28,516 kg) (95,166 minus 32,300 equals 62,866).

NMFS will adjust the longline and harpoon quota for the period July 1 through December 31, 1992, under § 630.24(e) after final catch reports for the first semi-annual period are received. That adjustment will be based on the difference between the January through June quota established in this rule and actual catches during that period.

Classification

This action is authorized by 50 CFR 630.24 (d) and (e).

The Assistant Administrator for Fisheries, NOAA (Assistant

Administrator), determined that this final rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. NMFS prepared a regulatory impact review on this action, the conclusions of which were published in the proposed rule and are not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared.

The Assistant Administrator, pursuant to section 553(d)(1) of the Administrative Procedure Act (APA), finds that, because this rule provides relief from the directed-fishery quotas and a non-directed-fishery bycatch limit currently in effect, the effective date of this final rule need not be delayed for 30 days.

In addition, the Assistant Administrator finds that a delay in making the necessary adjustment to increase the semi-annual directed-fishery quota for drift gillnets for the period July 1 through December 31, 1992, in effect delaying availability of the increased quota to fishermen, is impracticable, unnecessary, and contrary to the public interest. Accordingly, good cause exists under section 553(b)(3) of the APA to publish the adjustment to the semi-annual directed-fishery quota for drift gillnets applicable to the period July 1 through December 31, 1992, as an interim final rule, as specified in 50 CFR 630.24(h), without prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: July 29, 1992.

Samuel W. McKeen,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

§ 630.7 [Amended]

2. In § 630.7, in paragraph (s), the reference to "§ 630.25(b)" is revised to read "§ 630.25(c)"; in paragraph (t), the

reference to "§ 630.25(c)" is revised to read "§ 630.25(d)"; and in paragraph (u), the reference to "§ 630.25(d)" is revised to read "§ 630.25(e)".

3. In § 630.24, paragraph (b)(1) and (c) are revised, and paragraph (i) is temporarily added effective from August 4, 1992, through December 31, 1992, to read as follows:

§ 630.24 Quotas.

(b) * * *

(1) The annual quota for the directed fishery for swordfish is 7.0 million pounds (3.18 million kg), dressed weight, divided into two semi-annual quotas as follows:

(i) For the semi-annual period January 1 through June 30—

(A) 47,583 pounds (21,584 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 3,452,417 pounds (1,566,066 kg), dressed weight, that may be harvested by longline and harpoon.

(ii) For the semi-annual period July 1 through December 31—

(A) 47,583 pounds (21,584 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 3,452,417 pounds (1,566,066 kg), dressed weight, that may be harvested by longline and harpoon.

(c) *Bycatch quota.* The annual bycatch quota for swordfish is 560,000 pounds (254,014 kg), dressed weight.

(i) *Directed-fishery quotas for July 1 through December 31, 1992.* The provisions of paragraph (b)(1)(ii)(A) of this section notwithstanding, the directed-fishery quota for the semi-annual period July 1 through December 31, 1992, that may be harvested by drift gillnet is 62,866 pounds (28,516 kg), dressed weight.

4. In § 630.25, in the first sentence of paragraph (a)(1), the reference to "§ 630.24(b)(1)" is revised to read "§ 630.24"; in the first sentence of paragraph (b), the parenthetical phrase "(9,766 kg)" is revised to read "(9,752 kg)"; and paragraph (d) is revised to read as follows:

§ 630.25 Closures and bycatch limits.

(d) *Bycatch limits in the non-directed fishery.* Aboard a vessel using or having aboard gear other than drift gillnet, harpoon, or longline, other than a vessel in the recreational fishery—

(1) A person may not fish for swordfish from the North Atlantic swordfish stock;

(2) Except as specified in paragraph (d)(3) of this section, no more than two

swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state; and

(3) Aboard a vessel in the squid trawl fishery, no more than five swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. For the purposes of this paragraph (d)(3), a vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawl gear aboard and squid constitute not less than 75 percent by weight of the total fish aboard or off-loaded from the vessel.

[FR Doc. 92-18368 Filed 8-3-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 920109-2009]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions, correction, and request for comments.

SUMMARY: NOAA announces reductions in vessel trip limits for yellowtail rockfish, widow rockfish, and thornyheads in the groundfish fishery off Washington, Oregon, and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The trip limits are designed to keep the catch within the 1992 harvest guidelines for these species while extending the fisheries as long as possible during the year.

EFFECTIVE DATE: 0001 hours (local time) July 29, 1992, for yellowtail rockfish and thornyheads, and 0001 hours (local time) August 12, 1992, for widow rockfish, until modified, superseded, or rescinded. Comments will be accepted through August 19, 1992.

ADDRESSES: Submit comments to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700—Bldg. 1, Seattle, Washington 98115; or Gary Matlock, Operations Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, California 90802-4213.

SUPPLEMENTARY INFORMATION: The FMP (56 FR 736, January 8, 1991) provides for

rapid changes to specific management measures that have been designated as "routine." Trip limits for yellowtail rockfish, widow rockfish, and thornyheads are among those management measures that have been designated as routine at 50 CFR 663.23(c)(1). At its July 1992 meeting, the Pacific Fishery Management Council (Council) reviewed the progress of the groundfish fishery and recommended the following changes to the current trip limits to the Secretary of Commerce (Secretary). The current trip limits were announced in a notice published on January 15, 1992, at 57 FR 1654 ("1992 Management Measures").

Yellowtail Rockfish

In January 1992, the harvest guideline for yellowtail rockfish was divided into northern and southern components: 4,000 mt north of Cape Lookout, Oregon (including the U.S. portion of the Vancouver subarea and the northern part of the Columbia subarea) and 1,400 mt south of Cape Lookout (including all of the Eureka subarea and the southern part of the Columbia area). An 8,000-pound cumulative trip limit was applied to yellowtail rockfish caught north of Cape Lookout. Because landings data indicated that the 1,400-mt harvest guideline component would accommodate the fishery south of Cape Lookout without a need for additional restrictions, a trip limit for yellowtail rockfish was not imposed in this area other than the 50,000-pound cumulative trip limit for the *Sebastes* complex, which includes yellowtail rockfish. The cumulative trip limits apply to specified 2- and 4-week periods, which are defined under paragraph A of the 1992 Management Measures.

The best available information presented at the July 1992 Council meeting indicated that fishing patterns had changed and that both harvest guideline components for yellowtail rockfish were likely to be exceeded if landing rates were not further curtailed. Approximately 3,731 mt of yellowtail rockfish have been landed through June 27, 1992, 48 percent ahead of the rate in 1991. Most of this increase occurred south of Cape Lookout, an area that until January 1992 had been subject to a trip limit for yellowtail rockfish. Consequently, the Council recommended that the cumulative trip limit for yellowtail rockfish be reduced at the beginning of the next 2-week period (July 29) from 8,000 pounds to 6,000 pounds, and extended farther south to the north jetty at Coos Bay, Oregon, to cover the area where most of the increased harvest has occurred. The

50,000-pound coastwide cumulative trip limit for the *Sebastes* complex remains unchanged.

This notice also revises the application of the trip limits so that they conform with those implemented by the States of Oregon and Washington. The 1992 Management Measures provided that trip limits be applied based on the port of landing. It later became apparent that vessels were fishing for yellowtail in the northernmost area that should have been most restricted, and landing these fish in the southern ports where the more liberal trip limit was applied. The States of Oregon and Washington modified their regulations so that if any fishing occurs north of the "line," the more restrictive trip limit applies. This is consistent with past practice.

Widow Rockfish

The catch rate of widow rockfish has accelerated since the spring, resulting in landings of 4,269 mt of widow rockfish through June 27, 1992. The 7,000-mt harvest guideline is projected to be reached by September 27 if the rate of landings is not slowed. In the 1992 Management Measures, the Secretary announced that a 3,000-pound trip limit may be imposed later in the year to extend the fishery as long as possible. Consequently, the Council recommended that the 30,000-pound cumulative trip limit for widow rockfish (which applies to specified 4-week periods) be reduced to 3,000 pounds per fishing trip (no longer on a cumulative basis), effective after completion of the current 4-week period, which ends on August 11, 1992.

Thornyheads

The 7,000-mt harvest guideline for thornyheads includes two species (shortspine and longspine), and was designed to protect the less productive shortspine thornyheads. Because the two species of thornyheads are caught together, and are not identified separately on landing tickets, these species are managed together. Landings through June 27, 1992, were estimated at 4,913 mt, 70 percent above the rate in 1991, and the harvest guideline is projected to be reached by mid-October if landing rates are not reduced. Through May, the proportion of longspines was 80-90 percent in California and 65 percent in Oregon. Therefore, the catch of shortspine thornyheads is not yet approaching its overfishing level of 3,500 mt. However, in order to provide for a fall fishery, the Council recommended that the cumulative trip limit for thornyheads be reduced from 25,000

pounds to 20,000 pounds, effective at the beginning of the 2-week fishing period that begins July 29, 1992.

Thornyheads are a part of the deepwater complex, which also includes sablefish and Dover sole. The change in the cumulative trip limit for thornyheads does not change the current 55,000-pound cumulative trip limit for the deepwater complex, which applies to the same 2-week periods.

Secretarial Action

The Secretary concurs with the Council's recommendations and herein announces the following changes to the 1992 Management Measures announced at 57 FR 1654:

Widow Rockfish

Effective 0001 hours (local time) on August 12, 1992, no more than 3,000 pounds of widow rockfish may be taken and retained, possessed, or landed per vessel per fishing trip. (This replaces the cumulative trip limit in paragraph B. of the 1992 Management Measures.)

Yellowtail Rockfish

Effective 0001 hours (local time) on July 29, 1992, no more than 50,000 pounds cumulative of the *Sebastes* complex may be taken and retained, possessed, or landed per vessel in a 2-week period. Of this 50,000 pounds, no more than 6,000 pounds cumulative may be yellowtail rockfish taken and retained north of Coos Bay, and no more than 10,000 pounds cumulative may be bocaccio landed south of Cape Mendocino.

If any vessel is used to fish north of Coos Bay during a 2-week period, then that vessel is subject to the trip limit for yellowtail rockfish taken and retained north of Coos Bay, no matter where the fish are possessed or landed. Similarly, if a vessel is used to take and retain yellowtail rockfish south of Coos Bay and possesses or lands yellowtail rockfish north of Coos Bay, that vessel is subject to the northern trip limit.

Coos Bay means 43°21'34" N. latitude, the north jetty at Coos Bay, Oregon. (This modifies measures in paragraph C. of the 1992 Management Measures.)

Thornyheads

The 25,000-pound cumulative trip limit per 2-week period for thornyheads is reduced to 20,000 pounds. (This modifies the thornyhead trip limit in paragraph (4)(c) of the 1992 Management Measures.)

Correction

This notice also corrects the typographical error in notice document

92-1065 beginning on page 1654 in the issue of Wednesday, January 15, 1992. The error at A.3. of "Secretarial Actions" on 57 FR 1660 mistakenly listed the ending date of the 4-week period beginning on July 15. The correct ending date is August 11. This affects only the widow rockfish fishery since it is the only species subject to a 4-week cumulative trip limit at this time.

Clarification

As in the past, it is unlawful to land more than the current legal trip limit. Therefore, as of the effective date and time that a trip limit is reduced, it is illegal to possess or land more than the current trip limit, even if those fish were caught when a higher trip limit was in effect. If in doubt, it is prudent to contact a local State or Federal enforcement agent.

Classification

These actions are made under the authority of and in accordance with the regulations at 50 CFR 663.23(c).

This action is authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact Statement (SEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded from the requirement to prepare an environmental assessment in accordance with section 6.02c.3.(f) of the NOAA Administrative Order 216-6.

This action is in compliance with Executive Order 12291.

The public has had the opportunity to comment on this action. The public participated in Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in July 1992 that resulted in the recommendation to take this action. Public comments will be accepted for 15 days after publication of this notice in the *Federal Register*.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18425 Filed 7-31-92; 11:33 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 57, No. 150

Tuesday, August 4, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-92-079PR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Proposed 1992-93 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1992-93 fiscal period (August 1-July 31) established under Marketing Order No. 906. Funds to administer this program are derived from assessments on handlers. This action is taken in order for the Texas Valley Citrus Committee (TVCC), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval.

DATES: Comments must be received by August 14, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-690-3670.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Texas citrus is subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable Texas oranges and grapefruit handled during the 1992-93 fiscal year (August 1-July 31). This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 135 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing order for Texas oranges and grapefruit, administered by the Department, requires that an annual budget of expenses be prepared by the TVCC and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the TVCC's expected expenses. The recommended budget and rate of assessment are usually acted upon by the TVCC shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the TVCC will have funds to pay its expenses.

The TVCC met on June 3, 1992, and unanimously recommended a 1992-93 budget of \$577,200 and an assessment rate of \$0.15 per 7/10 bushel carton. In comparison, 1991-92 budgeted expenditures were \$102,250. Due to a small crop caused by a severe freeze in December 1989, no assessment rate was established for the 1991-92 fiscal year. Assessment income for 1992-93 is estimated at \$375,000 based on anticipated fresh domestic shipments of 2.5 million cartons of oranges and grapefruit. This, along with \$10,000 in interest income, \$46,200 in other income (spoon sales and fax machine rental) and \$148,000 from the TVCC's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1992-93 fiscal year, estimated at \$235,105, would be within the maximum permitted by the order of one fiscal year's expenses.

Major budget categories for 1992-93 include \$62,000 for administration of the marketing order and \$358,700 for administration of TexaSweet Citrus Advertising, Inc. (TCAI). TCAI has carried out the TVCC's advertising and promotion program for the past several seasons. Other research projects include \$10,000 for a tree census survey and \$148,000 for a Mexican fruit fly support program.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, those costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 10 days is deemed appropriate for this action. Since TVCC expenses are incurred on a continuous basis during the entire fiscal period, approval of the proposed expenditure authorization must be expedited.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 906 be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS.

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 906.232 is added to read as follows:

§ 906.232 Expenses and assessment rate.

Expenses of \$577,200 by the Texas Valley Citrus Committee are authorized, and an assessment rate of \$0.15 per carton of assessable oranges and grapefruit is established for the 1992-93 fiscal period ending on July 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: July 30, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-18376 Filed 8-3-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 948

[Docket No. FV-92-077]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 948 for the 1992-93 fiscal period (September 1, 1992, through August 31, 1993). Authorization of this budget would permit the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 14, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2523-S, Washington, DC 20090-6458. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2523-S, Washington, DC 20090-6458, telephone 202-720-9918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No. 948 both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable potatoes handled during the 1992-93 fiscal period, beginning September 1, 1992, through August 31, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8(c)(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirement set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 118 handlers of Colorado Area II potatoes under this marketing order, and approximately 285 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$300,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992-93 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met May 21, 1992, and unanimously recommended a 1992-93 budget of \$57,250, \$2,970 more than the previous year. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Major increases include \$1,275 for manager's salary, \$635 for assistant's salary, and \$500 for telephone. All promotion and advertising expenses are financed under the State order.

The Committee also unanimously recommended an assessment rate of \$0.0036 per hundredweight, \$0.0004 less than last season's rate. This rate, when applied to anticipated shipments of 13,250,000 hundredweight, would yield \$47,700 in assessment income. This, along with \$9,540 from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in

the Committee's authorized reserve at the beginning of the 1991-92 fiscal period, estimated at \$63,781, were within the maximum permitted by the order of two fiscal periods' expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992-93 fiscal period for the program begins on September 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Colorado Area II potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 948.209 is added to read as follows:

§ 948.209 Expenses and assessment rate.

Expenses of \$57,240 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) are authorized, and an assessment rate of \$0.0036 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: July 30, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-18374 Filed 8-3-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-72; Notice No. SC-92-4-NM]

Special Conditions; Embraer Model CBA-123 Airplane, Engine Cowling and Nacelle Skin Retention

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Embraer Model CBA-123 airplane. This is a new 19 passenger transport category airplane with a unique aft mounted turboprop propulsion system having pusher propellers. This is a novel and unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes in the Federal Aviation Regulations (FAR). This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-72, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-72. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Henry Jenkins, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. SW., Renton, Washington, 98055-4056, telephone (206) 227-2141.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-72." The postcard will be date/time stamped, and returned to the commentor.

Background

On July 31, 1986, Embraer applied for a type certificate for their new Model CBA-123 airplane. Unlike conventional transport-category airplanes with the engines and propellers mounted forward of the wing in a tractor configuration, this 19-passenger transport-category airplane has a unique aft-fuselage installation of engines and propellers mounted on pylons in a pusher configuration. Any lost engine cowling or nacelle skin could contact the propellers and empennage and cause catastrophic damage. These potential hazards are not adequately covered by existing regulations applicable to conventional transport category airplanes.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA-123 meets the applicable requirements of Subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; or (2) Compliance with later effective amendments is elected or required under § 21.17; and (3) Special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA-123 would

be required to comply with part 25 through Amendment 25-60. However, Embraer has elected to comply with part 25 through Amendment 25-61 and §§ 25.571(e)(2) and 25.905(d) as amended through Amendment 25-72.

In addition to the applicable airworthiness regulations and special conditions, the Model CBA-123 must also comply with the noise certification requirements of part 36 and the engine emission requirements of part 34 (formerly Special Federal Aviation Regulation 27) in effect at the time the type certificate is issued.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model CBA-123 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2). The special condition which may be developed as a result of this notice will form an additional part of the type certification basis.

Novel or Unusual Design Feature**Engine Cowling and Nacelle Skin Retention**

Due to the aft pylon mounting of the engines and pusher propellers, any loss of engine cowling or nacelle skin could cause catastrophic damage directly by impact with empennage mounted control surfaces or indirectly by damaging propeller blades which in turn could separate and strike the empennage. Design precautions must be taken to minimize the possible failure modes that could cause loss of engine cowling or nacelle skin.

Conclusion: This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502,

1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Embraer Model CBA-123 airplane:

Engine Cowling and Nacelle Skin Retention

a. Each airplane must be designed and constructed to—

(1) Preclude any inflight opening or loss of any cowling or nacelle skin which would, under any foreseeable conditions, prevent continued safe flight and landing; and

(2) Minimize the occurrence and hazardous effects of inflight opening or loss of any cowling or nacelle skin.

b. The retention system for each removable or openable cowling must—

(1) Keep the cowling closed and secured following any single failure or malfunction or probable combination of failures;

(2) Have readily accessible means of closing and securing the cowling which does not require excessive force or manual dexterity; and

(3) Have reliable provisions for effectively verifying that the cowling is secured prior to each takeoff. The provisions must address—

(i) Any effects of wear or improper adjustment; and

(ii) Any failure to properly close, latch, or lock the cowling.

c. If direct visual inspection means are used to comply with paragraph b, the provisions must be clearly evident during a preflight check using a flashlight or equivalent lighting source.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-18402 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AWA-20]

Proposed Establishment of the Kalamazoo/Battle Creek International Airport Radar Service Area, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 90-AWA-20, which was published in the Federal Register on October 23, 1991 [56 FR 55018]. The Notice of Proposed Rulemaking offered for consideration the establishment of an Airport Radar Service Area (ARSA) at the Kalamazoo/

Battle Creek International Airport which is currently being served by a Terminal Radar Service Area (TRSA). A thorough review and analysis of the public comments and recommendations have been completed. The Federal Aviation Administration has determined that withdrawing the proposal at this time is warranted. This action will provide an opportunity to reexamine the traffic and operations in the airspace associated with Kalamazoo/Battle Creek Airport.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION: On October 23, 1991, a Notice of Proposed Rulemaking was published in the *Federal Register* to amend 14 CFR part 71 of the Federal Aviation Regulations to establish an ARSA at Kalamazoo/Battle Creek International Airport (56 FR 55018). The criteria that the FAA uses for establishing ARSA's include a minimum of 75,000 annual instrument operations at the primary airport; or 100,000 annual instrument operations at the primary and secondary airports in the terminal area hub; or 250,000 passenger enplanements in one year. The figures for Kalamazoo/Battle Creek International Airport had reached 74,302 instrument operations and 249,108 enplanements in 1990 and were anticipated to increase.

A total of 134 written comments were received during the comment period. USAir, Air Transport Association, and Air Line Pilots Association submitted comments in support of establishing the proposed ARSA. The remaining commenters opposed this action asserting the following reasons:

1. General aviation (GA) traffic has decreased in recent years, GA industry is suffering in the worst business slump in aviation history, and this proposal coupled with the requirements for additional equipment to operate in the airspace would further reduce the GA segment of the airspace users.

2. Establishing the ARSA based on annual enplaned passenger count should not be a consideration in this proposal because much of the commuter aircraft operations no longer exist at the airport.

3. The only fixed-based operator, Kal-Aero, will be relocating to another airport in June 1992, which should result in reductions in the instrument operations at Kalamazoo.

4. The cost to taxpayers to establish the ARSA creates unnecessary Federal spending.

In light of the comments received, it was concluded that establishing the Kalamazoo ARSA would not be warranted at this time. Kalamazoo/Battle Creek Airport is an eligible candidate for establishing an ARSA under the 1991 instrument operations count; however, further consideration will be given to the rapid changes affecting the airport. The NPRM is being withdrawn to provide the FAA with the opportunity to collect and evaluate data reflecting the most recent conditions in the Kalamazoo area.

List of Subjects in 14 CFR Part 71

Airport radar service areas, Aviation safety, Incorporation by reference.

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 90-AWA-20, as published in the *Federal Register* on October 23, 1991 (56 FR 55018), is hereby withdrawn.

(Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9585, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.)

Issued in Washington, DC, on July 23, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-18450 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M#

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1116

Reporting Requirements Under Section 37 of the Consumer Product Safety Act; Proposed Revision to Interpretative Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed revision to interpretative rule.

SUMMARY: The Consumer Product Safety Commission (the "Commission") publishes a proposed revision to its interpretative rule advising manufacturers subject to section 37 of the Consumer Product Safety Act (CPSA) how to comply with the requirement that they report to the Commission certain information relating to settled civil actions and judgments in favor of plaintiffs who have alleged the involvement of a consumer product in death or grievous bodily injury. The proposed revision provides examples of

the types of injuries that constitute "grievous bodily injury" under section 37(e)(1) of the Act.

DATES: Comments from the public are due no later than October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Gidding, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20297, (301) 504-0626.

SUPPLEMENTARY INFORMATION:

1. **Background:** Section 37 of the CPSA (15 U.S.C. 2064) requires manufacturers of consumer products that are the subject of lawsuits for death or grievous bodily injury to file reports with the Commission if the same particular model of a product is involved in three lawsuits that settle or are adjudicated in favor of the plaintiff in any one of the 24-month periods enumerated in section 37(b) of the Act. The reporting requirements of section 37 went into effect on January 1, 1991, the day on which the initial two year window for filing reports began. To notify the public of how the Commission intends to interpret and implement section 37, on October 28, 1991, the Commission published for public comment a proposed interpretative rule. On August 4, 1992, the Commission issued a final interpretative rule responding to the comments received.

The preamble to the final rule points out that the reporting requirements of sections 37 and the defect reporting obligations imposed by section 15(b) of the CPSA are two of the most important tools the Commission employs to identify and remedy serious product hazards. It also notes that one principal objective of the enactment of section 37 is to create an "automatic" system for manufacturers to report information concerning settled or adjudicated cases to the Commission without the necessity to perform the types of analyses of potential defects and risks of injury envisioned by section 15(b) of the CPSA, 15 U.S.C. 2064(b). However, analyzing and cataloging lawsuit information under the provisions of section 37 often requires interpretation. For example, in analyzing whether an injury is "grievous bodily injury" under section 37(e)(1), the terms used in the statute, e.g. severe electric shock, severe burns, disfigurement, debilitating internal disorder, loss of important bodily functions, and injuries likely to require extended hospitalization, are susceptible to varying interpretations.

After reviewing the comments on the proposed rule, the Commission believed that the rule, as drafted, created uncertainty about the scope of the

reporting obligation, both for manufacturers of products subject to the rule and for the enforcement staff of the Commission. Therefore, to provide clearer guidance as to which settled or litigated lawsuits are reportable under section 37, the Commission clarified the "reasonable person" test in § 1116.8 of the rule for determining whether products are the same particular model. The Commission also noted its intention to provide examples of the types of injury that constitute "grievous bodily injury" in § 1116.2(b). However, since the public had not had the opportunity to comment on the supplemental definitions at the time the proposed rule was published, the Commission elected to publish the examples for public comment prior to their incorporation in the final rule.

2. Supplemental Definitions: The rule incorporates *verbatim* several definitions contained in section 37, including that of the term "grievous bodily injury". Under section 37(e)(1), a "grievous bodily injury" includes mutilation, amputation, dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorder, severe burn, severe electric shock, and injuries likely to cause extended hospitalization. The final rule does not undertake to clarify these terms. However, each of the terms contained in section 37(e)(1) requires some degree of interpretation. For example, amputation could refer to soft tissue damage or to removal of bone or cartilage. The terms "severe burns" and "severe electrical shock" are susceptible to differing interpretations, as are "mutilation," "debilitating internal disorder," and "loss of important bodily functions". The term "disfigurement" raises issues of the extent of injury that must occur to meet the statutory threshold.

Since the Commission's objective is to provide manufacturers with clear guidance concerning the reporting requirements, the Commission is proposing to revise § 1116.2(b) the rule by including examples of the types of injury that constitute "grievous bodily injury". The proposed revision to the rule also makes clear that the term "grievous bodily injury" includes, but is not limited to, the examples listed in the final rule. To assure that the examples are consistent with standard commercial practice, the Commission obtained information from members of the insurance industry on the criteria taken into account in loss compensation and reinsurance in evaluating the severity of certain types of injuries.

For reinsurance purposes, certain types of injuries must be reported to

reinsurers, regardless of defenses, liability limits, or insurance reserves. These include paraplegia, quadriplegia, amputation, brain or brain stem injury including coma and spinal cord injuries, blindness or serious impairment of vision, third degree burns over ten percent of the body or more, second degree burns over 60 percent of the body or more, and massive internal injuries. In addition, insurers generally consider the following types of traumatic injuries to be serious, recognizing that, unlike sections 15(b) and 37, the industry itself does not distinguish between "serious" and "grievous" injuries: Permanent paralysis or paresis, permanent brain injury to any degree or with any residual disorder, permanent loss, to any degree, of vision, hearing, sense of smell, touch, or taste, permanent facial disfigurement, non-facial scarring that results in permanent restriction of motion, permanent injury to a vital organ, to any degree, total loss or loss of use of any internal organ, injury, temporary or permanent, to more than one internal organ, multiple fractures, compound fracture of any long bone, allegations of traumatically induced disease, any back or neck injury requiring surgery, any injury requiring joint replacement or any form of prosthesis, any injury requiring 30 or more consecutive days of in-patient care in an acute care facility, and any injury requiring 60 or more consecutive days of in-patient care in a rehabilitation facility.

The Commission believes that all of the types of injuries above are examples of grievous bodily injury, and proposes to revise the rule accordingly. Based on its own expertise, the Commission has also included in the proposed revision to the rule ventricular fibrillation, neurological damage, or thermal damage to internal tissue as examples of severe electric shock. In addition, the Commission solicits public comment on any other types of injury that commenters believe may constitute "grievous bodily injury" within the meaning of section 37(e)(1).

Proposed Effective Date: The Commission proposes that this revision become effective 30 days after the date of publication of the revised final interpretative rule in the *Federal Register*.

List of Subjects in 16 CFR Part 1116

Administrative practice and procedure, Business and industry, Confidential business information, Consumer protection, Reporting and recordkeeping requirements.

In accordance with the provisions of 5 U.S.C. 553 and under the authority of the

Consumer Product Safety Act, 15 U.S.C. 2052 *et seq.*, the Commission proposes to amend part 1116 of title 16, Chapter II, of the Code of Federal Regulations as follows:

PART 1116—REPORTS SUBMITTED PURSUANT TO SECTION 37 OF THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for part 1116 continues to read as follows:

Authority: 5 U.S.C. 2055(e), 2084.

2. Section 1116.2(b) is revised to read as follows:

* * * * *

(b) *Grievous bodily injury* includes, but is not limited to, any of the following categories of injury:

(1) Mutilation or disfigurement. Disfigurement includes permanent facial disfigurement or non-facial scarring that results in permanent restriction of motion;

(2) Dismemberment or amputation, including the removal of a limb or other appendage of the body;

(3) The loss of important bodily functions or debilitating internal disorder. These terms include:

(i) Permanent injury to a vital organ, in any degree;

(ii) The total loss or loss of use of any internal organ,

(iii) Injury, temporary or permanent, to more than one internal organ;

(iv) Permanent brain injury to any degree or with any residual disorder (e.g. epilepsy), and brain or brain stem injury including coma and spinal cord injuries;

(v) Paraplegia, quadriplegia, or permanent paralysis or paresis, to any degree;

(vi) Blindness or permanent loss, to any degree, of vision, hearing, or sense of smell, touch, or taste;

(vii) Any back or neck injury requiring surgery, or any injury requiring joint replacement or any form of prosthesis, or;

(viii) Compound fracture of any long bone or multiple fractures;

(4) Injuries likely to require extended hospitalization, including any injury requiring 30 or more consecutive days of in-patient care in an acute care facility, or 60 or more consecutive days of in-patient care in a rehabilitation facility;

(5) Severe burns, including any third degree burn over ten percent of the body or more, or any second degree burn over thirty percent of the body or more;

(6) Severe electric shock, including ventricular fibrillation, neurological damage, or thermal damage to internal tissue caused by electric shock.

(7) Other grievous injuries, including any allegation of traumatically induced disease.

Manufacturers may wish to consult with the Commission staff to determine whether injuries not included in the examples above are regarded as grievous bodily injury.

Dated: July 29, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-18420 Filed 8-3-92; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Proposed Requirements for Products Containing Lidocaine or Dibucaine

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rules.

SUMMARY: Under the Poison Prevention Packaging Act of 1970, the Commission is proposing to require child-resistant packaging for products containing (1) more than 5.0 milligrams (mg) of lidocaine in a single package or (2) more than 0.5 mg of dibucaine in a single package. These requirements are proposed because the Commission has preliminarily determined that child-resistant packaging is required to protect children under five years of age from serious personal injury and serious illness resulting from ingesting such substances. Lidocaine and dibucaine are used in prescription drugs and over-the-counter drug products that are applied to the skin or mucous membranes to provide an anesthetic effect.

DATES: Comments on the proposal should be submitted not later than October 19, 1992.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the office of the Secretary, Consumer Product Safety Commission, room 420, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 504-0800.

FOR ADDITIONAL INFORMATION CONTACT: Suzanne Barone, Project Manager for Poison Prevention, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0477.

SUPPLEMENTARY INFORMATION:

A. Background

Relevant statutes and regulations. The Poison Prevention Packaging Act of

1970 (the "PPPA"), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (§ 1700.20). Regulations were issued requiring special packaging for a number of household products (§ 1700.14). The findings that the Commission must make in order to issue a standard requiring child-resistant ("CR") packaging for a product are discussed below in Section D of this notice. For the purposes of the PPPA, the amount of a substance "in a single package" that triggers the requirement to place the product in CR packaging refers to the total amount in a single retail unit of the substance.

One of the categories of products for which CR packaging is required is prescription drugs intended for oral administration to humans, with specified exemptions. 16 CFR 1700.14(a)(10). Drugs that are applied topically (for example, ointments, creams, sprays, suppositories, mouthwash, etc.) are not covered by the oral prescription drug standard. Where prescription drugs are subject to a special packaging standard, section 4(b) of the PPPA allows such products to be sold in non-CR packaging only when (1) directed by the prescribing medical practitioner or (2) requested by the purchaser. 15 U.S.C. 1473(b).

For nonprescription (over-the-counter, or "OTC") products subject to special packaging standards, section 4(a) of the PPPA allows the manufacturer or packer to package the product in non-CR packaging only if (1) the manufacturer (or packer) also supplies the substance

in CR packages and (2) the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

The Commission may restrict the right to market a single size in noncomplying packaging only if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CR packaging. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

Previous Commission activities. (4)¹ In 1985, the Commission's staff reviewed ingestion data for topical prescription drugs to assess the need for CR packaging. Lidocaine, a local anesthetic, was identified as a topical drug that presented a potential ingestion hazard to young children. Local anesthetics are used to produce temporary loss of feeling to a limited area of the body by decreasing the transmission of nerve impulses in that area.

In 1985, many manufacturers of two-percent viscous prescription Lidocaine drugs were voluntarily using CR packaging on products intended to be dispensed directly to the consumer. The Commission directed the staff to pursue voluntary action to address the ingestion hazard presented by Lidocaine-containing drugs and to continue to monitor data on topical prescription drugs. In 1986, the staff sent letters to the known manufacturers of two-percent viscous prescription Lidocaine products requesting that the manufacturers (1) use CR packaging on all consumer-ready packages of two-percent viscous lidocaine products, and (2) label two-percent viscous lidocaine products intended to be repackaged by

¹ Numbers in brackets indicate the number of a relevant document as listed in appendix 1 to this notice. When a reference document that is cited in a document listed in appendix 1 is referred to, both the number of the appendix 1 document and the designation of the reference document as given in the appendix 1 document are given, e.g., (1, Ref. A).

the pharmacist to advise the pharmacist to dispense the drug in CR packaging.

In 1990, the staff updated its review of the toxicity of lidocaine. The scope of the review was expanded to include other topical local anesthetics marketed for consumer use, and to include OTC products as well as prescription products. The review showed that two local anesthetics, lidocaine and dibucaine, have caused serious adverse effects, including death, following accidental ingestion by young children.

Industry practices. Lidocaine products are packaged in several different kinds of packaging. These are prescription bottles, squeeze bottles, aerosols, and tubes. Dibucaine products are packaged only in tubes.

Table I shows the number of units and market share of topical anesthetics containing lidocaine and dibucaine for each type of packaging. Estimates of unit costs to pharmaceutical manufacturers for CR packaging are included.

TABLE I.—ESTIMATED INCREMENTAL COST FOR CHILD-RESISTANT PACKAGING FOR TOPICAL ANESTHETICS CONTAINING LIDOCAINE OR DIBUCAINE (1989)

Type of packaging unit sales (percent of market)	Unit cost (dollars)	Description
Rx Bottles—0.8 million ¹ (5 percent).	.01-.02	CR closure.
Aerosols—3.1 million (19 percent).	.015	CR overcap.
Squeeze Bottles—4.7 million (29 percent).	.015	CR closure with restricted orifice.
Rx and OTC Tubes—7.6 million (47 percent).	Unknown	CR closure for existing tube not on market.
Unknown—.04 million (<1 percent).		

¹ An estimated 90 percent of this market is now using CR closures.

Source: CPSC Directorate for Economic Analysis, and IMS America, Ltd.

An estimated 7.6 million collapsible tubes containing lidocaine or dibucaine cream or ointment were sold in 1989. About 85 percent contained one ounce or less. The remaining 15 percent were packaged in 1.2, 1.5, and 2.0 ounce tubes. Of the 7.6 million, 7.4 million were OTC and 0.2 million were dispensed by prescription. About 78 percent of OTC lidocaine and dibucaine creams and ointments are sold to pharmacies at \$5 or less per unit, and about 93 percent of prescription lidocaine and dibucaine creams and ointments are sold to pharmacies for less than \$10 each. Tube packaging represents about 32 percent of all lidocaine packaging and 100

percent of dibucaine packaging. As a result of reports of 10 cases of acute intoxication of children from oral ingestion of dibucaine-containing topical preparations over the period from 1951-1973, virtually all dibucaine preparations now contain a label warning that swallowing the product can be hazardous, particularly to children.

Lidocaine- and dibucaine-containing collapsible tubes currently in use protect the contents from contamination and moisture and enable the application of a controlled volume of medication to small areas. According to packaging industry spokespersons contacted by the Commission's Directorate for Economic Analysis, there are no known CR closures for the small (two ounces or less) pharmaceutical tubes now in use.

B. Lidocaine

Dosage and packaging. (1) The topical local anesthetic lidocaine is available in prescription and OTC preparations. The prescription formulation is a two-percent viscous solution of lidocaine that is used for anesthesia of irritated or inflamed mucous membranes of the mouth and throat. Care must be taken following the oral use of viscous lidocaine because swallowing may be impaired. It is recommended that food not be ingested for one hour following oral use because of the potential for aspiration. For adults, it is recommended for mouth pain that one 15 ml tablespoon be swished around the mouth and spit out; for throat pain, the same amount can be gargled and either spit out or swallowed. The maximum recommended single adult dose is 4.5 milligrams/kilogram (mg/kg), not to exceed 300 mg. (A kilogram weighs approximately 2.2 lb.)

For children under three years of age, it is recommended that ¼ teaspoonful be measured out and applied to the affected area with a cotton-tipped applicator. For children three years old and older, the dose is prescribed based on the weight and age of the child. The dose interval for children should be at least three hours, so as to not exceed four doses in a 12-hour period.

The OTC lidocaine products are topical first aid antiseptic/anesthetic preparations that are used to cleanse wounds and prevent infection, in addition to relieving the pain and itching due to insect bites, minor sunburn, minor cuts, and skin irritations. The OTC preparations are available in many different formulations, including creams, ointments, and liquids. The liquid preparations contain 1.5 to 2.5 percent lidocaine hydrochloride. The liquid

preparations typically are packaged in 2.5 to 16 oz squeeze or pump bottles or aerosol sprays and are labeled for external use only. Creams and ointments contain 0.5 to 2.5 percent lidocaine and typically are packaged in tubes containing 1.25 oz or in 4 oz bottles (jars). These products are recommended for children two years of age and older.

Toxicity. (1) The toxicity of lidocaine has been demonstrated in animals and humans. Adverse effects have been observed in humans following both therapeutic usage and accidental overdosage. Lidocaine is readily absorbed through mucous membranes and abraded skin. The OTC preparations warn against using large quantities over raw or blistered areas or puncture wounds. The first-aid spray preparations warn against use near the mouth, eyes, ears, or other sensitive areas. Absorption of lidocaine results in systemic side effects occurring most commonly in the cardiovascular and central nervous systems. Adverse effects range from minor effects such as disorientation, dizziness, numbness, and drowsiness to major effects, including convulsions, coma, and respiratory arrest. The blood level of lidocaine that is associated with toxic effects is a concentration of over six micrograms/milliliter (µg/ml). Major adverse effects occur with blood levels over 10 µg/ml.

Animal toxicity studies were carried out with lidocaine using several different species and routes of exposure. Oral LD₅₀ values for the rat and mouse are 317 mg/kg and 220 mg/kg, respectively (1, Ref. Y.) The median convulsive dose was calculated to be 75 percent of the lethal dose in one study. *Id.* The intravenous LD₅₀ values were calculated to be 20-34 mg/kg in various mice studies and 25 mg/kg in the rat. *Id.* Although these animal data clearly demonstrate the high toxicity associated with lidocaine, the human experience data described below are more relevant for extrapolation to toxicity in children.

The staff is aware of nine deaths attributed to the accidental or intentional overdose of lidocaine:

- The CPSC Death Certificate file contains a report of a three-year-old child who died in 1980 after the accidental ingestion of lidocaine. The causes of death were listed as cardiac arrhythmia and degenerative brain effects. [1, Ref. AA.]
- A second death certificate reports the 1981 death of a two-year-old child after accidental overdose of a combination of two drugs, lidocaine and meperidine (a narcotic analgesic).

Additional information is not available on this case. [5a]

- The CPSC Reported Incident File contains the report of the death of an 11-month-old child, in 1984, from accidental ingestion of lidocaine. In this case, the child removed the CR closure from the product. [5b]

- The FDA Adverse Reaction Reporting System reports an accidental death, in 1979, of a 13-month-old girl who ingested a Canadian viscous lidocaine product. The blood lidocaine concentration was 20 ug/ml. [5c]

- A case reported in the literature describes the death, in 1986, of a 13-month-old boy. The boy had blood lidocaine levels of 19.5 ug/ml, remained unconscious, and was mechanically ventilated for 54 days. The child had suffered respiratory arrest at home prior to hospitalization. [1, Ref. Z.]

- Two adult deaths due to intentional overdose of lidocaine are reported in the literature. In these two cases, the blood lidocaine levels were 40 ug/ml and 53 ug/ml, respectively. [1, Ref. S.]

- A case investigated by CPSC staff involved the death in 1990 of a 14-month-old girl who ingested an unknown amount of two-percent viscous lidocaine. Prior to the ingestion, the lidocaine had been applied to a diaper rash. The child had been playing with the capped bottle, and the child-resistant cap came off. The mother did not believe the drug was hazardous, because she had been told by the pediatrician to rub lidocaine on the child's gums to ease teething pain. The toxicology report revealed high levels of lidocaine in the blood (12 ug/ml) and liver.

- Another death in 1990 involved a 15-year-old girl who drank up to 480 ml of an OTC first-aid liquid containing 2.5 percent lidocaine. The cause of death was aspiration of gastric contents secondary to lidocaine intoxication. The serum lidocaine level was 18 ug/ml.

The following cases reported in the literature describe adverse effects observed in young children following therapeutic administration or accidental ingestion of lidocaine:

- A 22-month-old child, weighing 10 kg, ingested 20 to 25 ml (approximately 50 mg/kg) of two-percent viscous lidocaine. The child arrived at the hospital convulsing and not breathing. The child was successfully resuscitated, and the seizures were controlled. The child was discharged after two days with no long-term effects. [1, Ref. AA.]

- A 3½ year-old child was given one tablespoon of two-percent viscous lidocaine (approximately 21 mg/kg) for a sore throat. The dose was repeated four hours later. The child developed

seizures and had a lidocaine blood level of 10.6 ug/ml. The child was transferred to Pediatric Intensive Care in respiratory distress. The child was alert approximately 10 hours following the initial seizure and was discharged the following day. [1, Ref. BB.]

- A 15-month-old boy developed seizures following the prescribed use of lidocaine. The child's lidocaine blood level was 4.9 ug/ml. [1, Ref. BB.]

- A mother used a finger to apply two-percent viscous lidocaine to an 11-month-old child's gums for teething pain, five or six times a day for a week. The child developed seizures and had a blood lidocaine level of 10 ug/ml. The child was treated in the intensive care unit and recovered after four days. [1, Ref. CC.]

The Food and Drug Administration's ("FDA's") Adverse Reaction Reporting System contains reports of two children (five months old and one year old) who developed seizures after being administered viscous lidocaine. [6] Many of the literature articles warn physicians about the hazards of prescribing lidocaine for teething pain and related symptoms in young children. In addition to the cases involving children, several cases of accidental lidocaine poisoning in adults are reported in the literature. The reported cases demonstrate extreme variability in the development of toxicity of lidocaine, with children appearing to be more sensitive to the central nervous system side effects of the drug.

For the period 1978 through April 1990, the CPSC's Children and Poisoning ("CAP") data base shows four ingestions of prescription viscous lidocaine and three ingestions of OTC lidocaine products by children under age five. [7] All seven children were treated in National Electronic Injury Surveillance System ("NEISS") hospital emergency rooms and released. Information on the amount of product ingested or adverse effects suffered by the children is not available.

Data collected by the FDA National Clearinghouse for Poison Control Centers from 1980 through 1984 [8] show 176 accidental ingestions of OTC lidocaine products, 18 of which exhibited toxic symptoms. There are 28 ingestions of prescription viscous lidocaine products, with 10 showing toxic symptoms. Details of the amount of product ingested or specific toxic symptoms are not available. This data base was discontinued after 1984.

For 1990, the American Association of Poison Control Centers ("AAPCC") reported 771 ingestions of lidocaine-containing products, 43 of which produced symptoms.

Level for Regulation. The maximum level of lidocaine that does not produce serious side effects in children is not known. The recommended maximum single total dose of lidocaine for children is 5.0 mg/kg, which is approximately 50 mg in a 10-kilogram (kg) child. However, as noted above, toxic effects were reported at therapeutic dose levels. The staff lacks sufficient information to establish that the reported cases involving toxic effects at therapeutic doses involved situations where the drug was ingested by mouth (the route of administration most relevant to accidental ingestion) or that there is no possibility that the proper therapeutic dose was exceeded. It is possible, however, that a child who accidentally ingests a lidocaine preparation will already have received an intentional therapeutic dose of the preparation. In addition, the systemic toxicity of the drug is not the only hazard it presents; there is the risk of serious injury or illness caused by aspiration of substances that are swallowed while the mouth and throat are anesthetized by the drug. These considerations make it difficult to establish a package size that, if ingested by a small child, would not cause serious toxic effects.

Therefore, the staff recommended that the recommended maximum dose of lidocaine for a 10-kg child be reduced by a factor of 10 (referred to as an "uncertainty factor") in order to arrive at a level that would not cause serious injury or illness in young children. [1,4] If this is done, products containing more than 5.0 mg of lidocaine in a single package would be subject to CR packaging standards. The Commission solicits comments on whether this an appropriate level for regulating products containing lidocaine.

C. Dibucaine

Dosage and packaging. The topical local anesthetic dibucaine is available in several OTC preparations. The OTC products are creams and ointments, which are packaged in 1, 1½, and 2 oz tubes for external use only. The OTC formulations, which are used for temporary relief of painful sunburn, minor burns, scrapes, scratches, nonpoisonous insect bites, and external hemorrhoidal pain, contain 0.5 percent or 1.0 percent dibucaine. The recommended dose for adults is not to exceed one ounce (equivalent to no more than 300 mg of dibucaine) in 24 hours. The recommended dose for a child, two years of age or older, is not to exceed ¼ ounce (equivalent to no more than 80 mg of dibucaine) in 24 hours.

Toxicity. [1] Dibucaine is one of the most potent and toxic local anesthetics. Systemic toxicity of dibucaine includes serious effects on both the central nervous system and the cardiovascular system. Adverse effects can include convulsions, depression of the heart muscle, and death. Dibucaine is readily absorbed through the mucous membranes and should not be used around the eyes or mouth. Systemic absorption may occur following the application of large areas of abraded or damaged skin, or following rectal administration. The FDA disapproved the use of dibucaine in sore-throat and mouth medicines because of the possibility of systemic toxicity, combined with the ease with which dibucaine is absorbed through the mucous membranes of the mouth and throat.

The toxicity of dibucaine has been demonstrated in animals and humans. Animal studies indicate that dibucaine is lethal at three mg/kg in dogs, and one mg/kg in monkeys. The toxic dose of dibucaine in humans is not known; however, the suggested maximum adult dose is 25 mg of dibucaine.

The staff is aware of six deaths of young children resulting from ingestion of dibucaine local anesthetics and of one death resulting from the rectal use of a dibucaine ointment:

- During the 23-year period of 1951 through 1973, one manufacturer received reports of 11 cases of acute intoxications of young children from dibucaine topical preparations. [1, Refs.], L.] Ten of the cases involved accidental ingestion; one case involved the rectal use of dibucaine ointment in a two-month-old infant. Four of the children who ingested the products, and the two-month-old infant, died. Additional details of the incidents were not provided.

- The CPSC Death Certificate File contains the report of a two-year-old child who died in 1987 after accidentally ingesting dibucaine cream. [5d] The child suffered from incoordination, was lethargic, had seizures, and could not be resuscitated from respiratory arrest. The child had a dibucaine blood level of 1.3 µg/ml.

- A second death certificate reports the death in 1988 of a 21-month-old child who accidentally ingested 22.5 grams of a dibucaine hemorrhoid ointment. [1, Ref. N; 5e] Cardiorespiratory arrest and convulsions developed. The child could not be resuscitated after suffering cardiac arrest.

Because of deaths reported from oral ingestion of dibucaine products, a warning was added to the labels of dibucaine products, stating:

*** should not be swallowed. Swallowing can be hazardous, particularly to children. In the event of accidental ingestion, consult a physician or poison control center immediately.

In addition to the cases listed above, there are several documented incidents of unexpected death following the use of dibucaine as a spinal anesthetic. [1, Ref. G.]

For the period of 1978 through February 1990, the CPSC CAP data base shows two ingestions of dibucaine products by children under age five. [7] Both children were treated in NEISS hospital emergency rooms and released. Information on the amount of product ingested or adverse effects suffered is not available.

Data from the FDA National Clearinghouse for Poison Control Centers from 1980 through 1984 show 113 ingestions of dibucaine products, six of which exhibited toxic symptoms. [8] This data base was discontinued after 1984.

The AAPCC National Data Collection System reports general data on the ingestion of topical local anesthetics, but does not contain specific information on the identity of the individual compounds involved. Lidocaine and dibucaine creams and ointments comprise only about 0.1 percent of the topical local anesthetics market. For the five-year period 1984 through 1988, 10,330 cases of accidental ingestion of topical local anesthetics by children under age five were reported. [9] Of these cases, 883 exhibited minor-to-moderate symptoms and 10 were life-threatening or resulted in disability. The two cases that resulted in death were attributed to dibucaine, and are described above. For 1990, the Commission contracted with AAPCC to obtain data for the drugs lidocaine and dibucaine. AAPCC reported 141 ingestions of dibucaine, 3 of which involved symptoms.

A review of the literature revealed one case in which a 12-month-old infant ingested a combination of three gm of boric acid and 300 mg of dibucaine. The child developed seizures, and also vomited due to the effects of the boric acid. The child was hospitalized and recovered fully after aggressive and intensive treatment.

Level for Regulation: The high potency and toxicity of dibucaine are well known; however, an absolute level of safety for this drug is difficult to determine. Most cases of reported deaths contain little information about the concentration of the drug or the amount consumed. In the two cases where information is available, one child died after ingesting 22.5 gm of

dibucaine ointment. This amount is equivalent to 225 mg of dibucaine, assuming that the more commonly used 1 percent preparation was involved. In the second case, a 10-kg child ingested 300 mg of dibucaine in combination with boric acid, which induces vomiting.

Ingestion of dibucaine results in the same types of toxicity as does ingestion of lidocaine. The differences between the two compounds are in the potency and duration of action. Less dibucaine than lidocaine is required to produce similar therapeutic or toxic effects. To arrive at an appropriate level for regulation of dibucaine, a correction factor of 10 was applied to the level for regulation derived for lidocaine. The Directorate for Health Sciences recommends that preparations containing more than 0.5 mg of dibucaine in a single package should be subject to CR packaging standards.

The Commission solicits comments on whether this is an appropriate level for regulation of products containing dibucaine.

D. Statutory Considerations

1. **Hazard to children.** Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission preliminarily finds that because of the toxic nature of lidocaine and dibucaine preparations, described above, and the accessibility of such preparations to children in the home, the degree and nature of the hazard to children in the availability of such substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances.

2. **Technical feasibility, practicability, and appropriateness.** [2] In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate." Technical feasibility exists when technology exists or readily can be developed and implemented by the effective date to produce packaging conforming to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use.

A. **Technical feasibility.** Lidocaine and dibucaine prescription and OTC

products are presently packaged in tubes, spray containers, aerosols, and prescription containers. Aside from some lidocaine-based prescription drugs, most of the current packaging appears to be non-CR packaging. The manufacturers of most viscous lidocaine-based non-oral prescription drugs have voluntarily packaged these drugs in consumer-ready CR prescription containers, even though they are not now required to do so under the PPPA regulations. [2, Ref. 3.] For those manufacturers using non-CR packaging, various types and designs of CR packaging can be readily obtained.

CR packaging for OTC and prescription tubes can be accomplished by using commercially available bottle threads on plastic tubes. [2, Ref. 4.] This would allow the use of readily available CR continuous-threaded closures on the tube. The Commission's staff is aware of tubes now on the market that use bottle threads that could be outfitted with existing push-and-turn continuous-threaded CR closures; however, the staff does not know that such CR tubes are available in the sizes needed for lidocaine and dibucaine products. Therefore, it may be necessary for the manufacturers of products subject to the proposed rules to develop and test such packaging and incorporate such packaging into their production lines. For those manufacturers using metal tubes, a change to a plastic tube, with appropriate stability testing, may be necessary.

Another alternative for meeting a special packaging requirement with tubes is to use a commercially available CR single-use metal tube with a membrane over the opening that requires a tool to open the package. (A single-use container is one where the entire content of the container is intended to be used at one time. A unit-dose container, defined in XIV National Formulary, p. 16, is a single-use container.) In other cases, commercially available unit-dose dispensing CR pouch packaging (one application per pouch) may be used instead of a tube for applying the product.

The Commission solicits comment on the development of CR tubes and on the effects on industry and consumers if such tubes are not developed.

Technical feasibility for lidocaine prescription drug products and OTC spray containers that are presently in non-CR packaging is demonstrated by: (1) Some manufacturers are voluntarily using commercially available prescription drug CR packaging for Rx two-percent viscous lidocaine consumer-ready preparations. (2) CR packaging for OTC products that are

dispensed by spraying is also commercially available.

There are numerous continuous-threaded special packaging designs that can replace the non-CR continuous-threaded closures presently being used with viscous lidocaine prescription medication and OTC spray packaging.

CR packaging for aerosols also can be readily obtained, and a number of commercially available designs could be used. Therefore, the Commission concludes preliminarily that there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with the forms of these products.

b. Practicability. Companies that are presently using CR packaging for viscous prescription drug products containing two-percent lidocaine have implemented assembly line and mass production techniques in their manufacturing processes. This shows that it is practicable to package two-percent viscous lidocaine-containing products in special packaging. No major problems from the manufacturing standpoint are anticipated in the change from non-CR to CR packaging, except for the multiple-dose tube-type packaging, which may require the use of a contract packager. As noted above, however, products currently packaged in non-CR tubes can be packaged in CR unit-dose tubes or CR unit-dose pouches.

The manufacturers of CR packaging don't anticipate any problems with supplying CR closures and containers. The major suppliers of CR packaging and materials indicate that they can supply more than the 15 million units estimated to be needed for lidocaine and dibucaine products. In most cases, manufacturers can incorporate CR packaging into their existing packaging lines. If there were any problems in modifying or obtaining new equipment, *i.e.*, capping, etc., a contract packager could be used in the interim to package lidocaine- and dibucaine-containing products. Because many existing designs suitable for use with the products that are the subject of the proposed regulation are currently being used in the packaging of other products, or can be readily developed, special packaging for this product seems practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of these products or the manufacturers of CR closure and capping equipment.

c. Appropriateness. Information available to the staff indicates that the CR packaging of lidocaine- and

dibucaine-containing products is appropriate. Some companies are presently voluntarily using special packaging for their viscous prescription drug products containing two-percent lidocaine. Other companies can utilize existing CR packaging designs and materials that are not detrimental to the integrity of the substance and do not interfere with its storage or use. Product shelf-life and integrity would not be expected to change, as it is anticipated that the same packaging materials could be used in contact with the product.

In the case of the multiple-dose CR tube packaging, however, it may be necessary, for example, to change from a metal tube to a plastic tube in order to provide a suitable mating surface for a CR cap. A major product manufacturer contacted by the Commission's staff indicated that it could find an appropriate multilayer plastic tube to replace the metal tube, but that the suitability of the new tube would have to be confirmed by protocol and product stability testing. A change from multiple-dose tubes to unit-dose CR tubes or pouches, also would require stability testing.

The Commission preliminarily concludes, therefore, that special packaging is appropriate because it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use.

Accordingly, the Commission preliminarily finds that special packaging is technically feasible, practicable, and appropriate.

3. Reasonableness. In establishing a special packaging standard, section 3(b) of the PPPA requires the Commission to consider the available data concerning whether the standard is reasonable. 15 U.S.C. 1472(b).

After considering the available data, the Commission concludes that there are no data that warrant a conclusion that the proposed rule is not reasonable.

4. Other considerations. Section 3(b) of the PPPA also requires the Commission, in establishing a special packaging standard, to consider:

a. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

b. The manufacturing practices of industries affected by the PPPA; and

c. The nature and use of the household substance. 15 U.S.C. 1472(b).

These items have been considered with respect to the various determinations made in this notice.

E. Effective date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. § 1471n. The Commission concludes that production of CR packaging can be fully implemented within a year from the publication of a final rule. Therefore, the final rule is proposed to become effective one year after publication of the final rule, as to all products subject to the rule that are packaged on or after that date.

This one-year effective date may not allow adequate time to modify or replace multiple-dose tubes if the initial design intended to be CR is found to be unsuitable. If this occurs, affected parties can apply to the Commission for a temporary exemption for the minimum period required to market their products in CR packaging. Applications for such exemptions should describe the efforts since the issuance of the final rule to implement complying package designs, explain why such efforts were diligent yet unsuccessful, and explain why additional efforts within a limited period should result in a complying package.

F. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics prepared an Initial Regulatory Flexibility Act Analysis to examine the effect of the proposed rule on small entities. [3b] The findings of that analysis are repeated below.

Effects on manufacturers generally. [3a] Under the proposed PPPA

requirement for topical preparations containing lidocaine or dibucaine, potential costs to manufacturers include: incremental costs for CR packaging, research and development costs for new designs if currently available CR packaging is unsuitable for some formulations, and costs associated with the need to obtain marketing approvals from other government agencies, i.e., the Food and Drug Administration ("FDA"). Under certain circumstances, these costs may be passed on to the consumer in the form of higher prices.

Lidocaine and dibucaine are available in prescription (Rx) and over-the-counter (OTC) topical preparations packaged in prescription bottles, collapsible tubes, aerosol containers, and squeeze bottles. The effect of the PPPA requirement on small entities depends upon the dosage form of the preparation. The possible market effects for each category of packaging are discussed below. [3b]

Prescription bottles. Prescription preparations containing two-percent viscous lidocaine are shipped by manufacturers as "consumer ready" or in bulk. The CR closure requirement will affect those of the approximately 26 manufacturers/suppliers who are not now voluntarily using CR closures on preparations shipped consumer-ready. In 1986, manufactures/suppliers representing about 90 percent of the market for prescription products advised the Commission they used or would voluntarily adopt the use of CR packaging on consumer-ready preparations. Up to 55,000 independent and chain store pharmacies also would be affected if they are not now voluntarily using CR closures for preparations dispensed from bulk. The estimated incremental cost of a CR closure is about two cents per package. While the proposal to require special packaging for prescription two-percent viscous lidocaine preparations may affect many small entities, the magnitude of the impact on any individual entity is expected to be minimal.

Collapsible tubes. OTC and prescription creams and ointments in collapsible tubes represent about 47 percent of all lidocaine and dibucaine packaging. Packaging industry spokespersons contacted by the Commission's Directorate for Economic Analysis are unaware of existing appropriate types of CR closures for the small pharmaceutical tubes now in use. Manufacturers of lidocaine and dibucaine preparations may be able to adopt the use of other types and sizes of tubes which are now in use for other products and which accept available

standard CR closures without adding materially to manufacturing costs. An estimated 7.4 million collapsible tubes containing lidocaine (4.1 million) or dibucaine (3.3 million) cream or ointment were sold OTC in 1989. The average retail price for these creams and ointments is about \$4.50 per tube. About 0.2 million tubes containing prescription lidocaine were sold in 1989 with an average retail price of \$16.00 to \$50.00 (that latter price was for a lidocaine preparation in combination with another ingredient).

The OTC lidocaine preparations in tubes are produced by four manufacturers. Two of these manufacturers qualify as small manufacturers and account for about 93 percent of the sales. The effects of the CR closure requirements for these firms is unclear. However, the impact could be significant if the two large firms (with a seven percent market share) choose to expand their market share by delaying pushing forward to consumers any price increase associated with meeting the CR requirement. The less diversified small businesses, in contrast, would be more likely to find it necessary to implement the price increase immediately.

OTC dibucaine creams and ointments in tubes are produced by approximately 24 small manufacturers, who account for only four percent of sales. Their combined share of the OTC dibucaine tube market amounts to about 132,000 units, or an average of about 5,500 units each. Costs associated with the use of alternate packaging may be prohibitive, and, if so, may result in the dropping of these product lines by some small firms.

About 99 percent of prescription lidocaine in tubes is produced by one manufacturer; the remaining tubes are produced by an unknown number of other manufacturers. The impact on these manufacturers depends upon the nature of the change and on the nature of the difficulties encountered. If alternative packaging costs are prohibitive to small manufacturers (if any), they may drop this product line.

Aerosols and squeeze bottles. A PPPA requirement for topical preparations containing lidocaine or dibucaine would also affect manufacturers of about 3.1 million aerosol containers (1989 sales) and about 4.7 million squeeze bottles (1989 sales). Small firms account for about 19 percent of the annual production of aerosols and about two percent of the annual production of spray bottles. Incremental costs for CR closures are estimated at 1.5 cents per closure, or \$46,000 and \$70,500, respectively for aerosols and sprays.

These costs are likely to have minimal effect on small firms.

Effective date. An effective date of one year from the date the regulation is promulgated should provide an adequate period of time for manufacturers of aerosols and sprays to obtain suitable CR packaging and incorporate its use into their packaging lines. Additionally, pharmacists regularly use CR packaging on oral prescriptions dispensed from bulk and should have suitable CR packaging on hand for prescription two-percent viscous lidocaine dispensed from bulk. A one-year effective date may not allow manufacturers of creams and ointments in tubes sufficient time if unexpected difficulties are encountered in locating suitable CR packaging materials, conducting necessary testing, and obtaining FDA marketing approval. The amount of time needed depends on the nature of change from present packaging chosen by the manufacturer and the nature of the difficulties encountered. Because of this, the Commission proposes to consider requests from affected parties for temporary exemptions, where necessary.

Alternatives to the proposed rule. There are no significant alternatives to the proposed rule that would mitigate the impact (if any) on the 24 small manufacturers of OTC dibucaine creams and ointments and the two small manufacturers of OTC lidocaine preparations now packaged in tubes and still accomplish the objective of the rule. That objective is to protect children under age five from serious injury or illness arising from the accidental ingestion of lidocaine and dibucaine, about half of which is packaged in tubes.

Conclusion. For the reasons given above, the Commission concludes that the proposal to require special packaging for products containing lidocaine and dibucaine, if issued, will not have any significant economic effect on a substantial number of small entities.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission assessed the possible environmental effects associated with the proposed PPPA packaging requirements for topical drug preparations containing lidocaine or dibucaine.

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for

consumer products normally have little or no potential for affecting the human environment. Analysis of the impact of this proposed rule indicates that CR closures for lidocaine- and dibucaine-containing preparations will have no significant effects on the environment. This is because manufacturers of affected products will have time to use up existing closure inventories and will not need to dispose of them in bulk. The rule will not significantly increase the number of CR closures in use and, in any event, the manufacture, use, and potential disposal of the CR closures present the same potential environmental effects as do the currently used closures.

Therefore, because this proposed rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

H. Possible Future Changes to the PPPA Test Protocol

On October 5, 1990, the Commission proposed to amend its requirements under the PPPA. 55 FR 40856. For the purpose of determining whether a package is CR, the current regulations provide that a package must be capable of resisting opening by 85 percent of a panel of 200 children after a 5-minute test and by 80 percent of the panel after an additional 5-minute test. In order to determine that the package can be used by adults, the package must also be able to be opened and, if appropriate, properly closed with 5 minutes by 90 percent of a panel of 100 persons of ages from 18 to 45 years.

In its proposal, the Commission concluded that, if child-resistant packages were easier to use, more people would purchase and properly use CR packaging. Accordingly, the Commission proposed to substitute a panel of 100 older adults, of ages from 60 to 75 years for the panel of 18- to 45-year-olds. The Commission also proposed to reduce the time for the adults to open and, if appropriate, properly resecure the package to one minute, preceded by a 30-second period that the adults can use to become familiar with how the package operates. The Commission also solicited comment on allowing a 5-minute familiarization period in the adult test, during which the subject must open the package, before the 1-minute test. 56 FR 9181 (March 5, 1991). The Commission also stated that, if it concludes that it is not feasible to substitute a panel of 60-75-year-olds for the present panel of 18-45-year-olds, it proposed to reduce the time allowed for the adult test to 30 seconds, preceded by a 30-second familiarization period.

Other amendments, intended to simplify the current child test procedures, add a procedure for determining whether the package was adequately resecured by the adults, and to ensure that the tests produced more consistent results, were also proposed.

In commenting on the current proposal, that lidocaine- and dibucaine-containing preparations be subject to CR packaging requirements, commenters are requested to inform the Commission about how the proposed changes to the PPPA test protocol would affect products containing lidocaine and dibucaine if a rule requiring these products to be in CR packaging is promulgated.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

I. Conclusion

For the reasons given above, the Commission proposes to amend 16 CFR Part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Public Law 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76, Secs 1700.1 and 1700.14 also issued under Public Law 93-573, sect. 30(a), 88 Stat. 1231.15 U.S.C. 2079(a).

2. Section 1700.14(a) is amended by adding new paragraphs (a)(20) and (a)(21), reading as follows (although unchanged, the introductory text of paragraph (a) is republished below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

(2) *Lidocaine.* Products containing more than 5.0 mg of lidocaine in a single package (i.e., retail unit) shall be packaged in accordance with the provisions of § 1700.15(a) and (b).

(21) *Dibucaine.* Products containing more than 0.5 mg of dibucaine in a single package (i.e., retail unit) shall be

packaged in accordance with the provisions of § 1700.15 (a) and (b).

Dated: July 30, 1992.

Sadye E. Dunn,
Secretary, Consumer Product Safety
Commission.

Appendix 1—List of References

(This Appendix will not be printed in the Code of Federal Regulations.)

1. Memorandum from CPSC's Directorate for Health Sciences, dated June 21, 1990 (toxicity).

2. Memorandum from CPSC's Directorate for Health Sciences, dated July 24, 1989 (technical feasibility, practicability, and appropriateness).

3. Memorandum from CPSC's Directorate for Economic Analysis, dated December 10, 1991 (a. economic information; b. regulatory flexibility analysis; and c. environmental assessment).

4. Memorandum from CPSC's Directorate for Health Sciences, dated December 1991 (briefing paper, with attached memoranda).

5. Death Certificates:
a. CPSC Death Certificate File, 1981, lidocaine.
b. CPSC Injury or Potential Injury Incident File, 1984, lidocaine.

c. FDA Drugs and Biologics Adverse Reaction Reporting System Data Base, 1979, lidocaine.

d. CPSC Death Certificate File, 1987, dibucaine.

e. CPSC Death Certificate File, 1988, dibucaine.

6. FDA Drugs and Biologics Adverse Reaction Reporting System Data Base.

7. CPSC National Electronic Injury Surveillance System Data Base—1978 through April 1990.

8. National Clearinghouse for Poison Control Centers Data Base 1980-1994.

9. AAPCC National Data Collection System 1984-1988.

10. Memorandum from CPSC's Directorate for Economic Analysis, "Market Sketch: Topical Preparations Containing Lidocaine and Dibucaine," Oct. 2, 1990 (revised April 23, 1992).

12. Memorandum from CPSC's Directorate for Economic Analysis, "Supplemental Information on Lidocaine and Dibucaine," April 23, 1992.

13. Memorandum from CPSC's Directorate for Health Sciences, "The Amount of Lidocaine and Dibucaine in Marketed Products," April 27, 1992.

14. Memorandum from CPSC's Directorate for Economic Analysis, "Amended Economic Data: Proposal to Require Child-Resistant Packaging for Topical Preparations Containing Lidocaine or Dibucaine," dated April 27, 1992 (with revised preliminary economic assessment).

15. Memorandum from CPSC's Directorate for Health Sciences, "Additional Human Experience Data for Lidocaine and Dibucaine," April 27, 1992.

16. Memorandum from CPSC's Directorate for Health Sciences, "Supplemental Information on Lidocaine and Dibucaine," May 28, 1992.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50592B; FRL-4063-7]

Heterocyclic Aldehyde Imine; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

DATES: Written comments must be submitted to EPA by October 5, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the new chemical substance covered in this SNUR is OPPTS-50592B, followed by the last four digits of the number of the proposed CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460. Telephone: (202) 260-3949.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 13, 1991 (55 FR 32406), EPA issued a SNUR

establishing significant new uses for heterocyclic aldehyde imine. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS-50592 (P-90-1624). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P-90-1624

Chemical name: Heterocyclic aldehyde imine (generic).

CAS Number: Not available.

Effective date of revocation of section 5(e) consent order: March 18, 1992.

Basis for revocation of section 5(e) consent order: The order was revoked based on the results of certain testing conducted by the PMN submitter as a requirement of the consent order. In its review of the PMN substance, EPA raised concerns for systemic toxicity, mutagenicity, and carcinogenicity for unprotected workers who could be exposed dermally to the PMN substance.

Two acute lethality and two 28-day repeated dose (subchronic) studies were conducted to help determine the potential health effects of P-90-1624. The test data demonstrate that the PMN substance, P-90-1624, does not act like nor hydrolyze into the analogue substance that was the basis of concern. The analogue substance is a known carcinogen and also produces certain systemic effects. The test data on P-90-1624 did, however, demonstrate that it is caustic and therefore, a dermatotoxicant. Other effects were seen in the test

results but were attributed to testing procedure errors or as a nontoxic reaction to the dermatotoxicity.

In the PMN, the submitter had stated that releases to water were not anticipated. The PMN submitter agreed to that restriction under the consent order. Three fish acute toxicity studies were submitted to address concerns for aquatic toxicity. Based on the fish test data, a new concentration of concern (COC) was established at 20 µg/L (ppb). This COC indicates a toxicity 35 times greater than the toxicity given by the original estimated COC of 700 ppb. The change to a lower COC is based on the fact that the toxicity of the hydrolysis product was not accounted for in the initial estimate. However, based on a probabilistic dilution model (PDM) estimate and an estimate of wastewater treatment removal efficiency, the Agency does not expect surface water concentrations of the PMN substance to exceed the COC more than 7 days per year. For this PMN substance, chronic toxicity is a concern only when the COC is exceeded by 20 days or more per year.

Based on the results of submitted test data, EPA can no longer support a determination that the manufacturing, processing, and use of the substance may present such an unreasonable risk to health or the environment to warrant continued regulation under section 5(e). Therefore, EPA is issuing this proposal to revoke the SNUR for P-90-1624. *CFR Citation:* 40 CFR 721.1245.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance

designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 27, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.1245 [Removed]

2. By removing § 721.1245.

[FR Doc. 92-18453 Filed 8-3-92; 8:45 am]

BILLING CODE 5550-50-F

40 CFR Part 721

[OPPTS-50580C; FRL-4063-9]

Coconut Oil Reaction Products With Tetrahydroxy Branched Alkane Esters of Trisubstituted Benzenepropanoic Acid; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

DATES: Written comments must be submitted to EPA by October 5, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the new chemical substance covered in this SNUR is OPPTS-50580C, followed by the last four digits of the number of the proposed CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-3949.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 26, 1990 (55 FR 26092), EPA issued a SNUR establishing significant new uses for coconut oil reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS-50580 (P-89-770). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P-89-770

Chemical name: Coconut oil reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid (generic).
CAS Number: Not available.

Effective date of revocation of section 5(e) consent order: March 6, 1992.

Basis for revocation of section 5(e) consent order: The order was revoked based on the results of specific test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to human health or the environment and concludes that further regulation under section 5(e) is not warranted at this time.

Toxicity testing results: An in vivo mouse micronucleus study by intraperitoneal (IP) route showed that the chemical substance is not a chromosome mutagen and an Ames assay showed that the chemical substance is not a gene mutagen. A 28-day repeated dose oral study in rats indicated that the chemical substance was slightly hepatotoxic, with a lowest-observed-adverse-effect-level of 1,000 mg/kg.

CFR Citation: 40 CFR 721.770.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA

concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 27, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:
Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.770 [Removed]

2. By removing § 721.770.

[FR Doc. 92-18454 Filed 8-3-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 721

[OPPTS-50583C; FRL-4063-8]

Phenol, 4,4'-(9H-Fluoren-9-ylidene)bis-; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

DATES: Written comments must be submitted to EPA by September 3, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the new chemical substance covered in this SNUR is OPPTS-50583C, followed by the last four digits of the number of the proposed CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV.

of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-3949

SUPPLEMENTARY INFORMATION: In the Federal Register of August 9, 1990 (55 FR 32406), EPA issued a SNUR establishing significant new uses for phenol, 4,4'-(9H-fluoren-9-ylidene)bis-. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking record

The record for the rule which EPA is proposing to revoke was established at OPTS-50583 (P-88-831). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name, CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P-88-831

Chemical name: Phenol, 4,4'-(9H-fluoren-9-ylidene)bis-.

CAS Number: 3236-71-3.

Effective date of revocation of section 5(e) consent order: January 15, 1991.

Basis for revocation of section 5(e) consent order: The consent order for the chemical substance designated as P-88-831 was revoked based on test data submitted pursuant to the terms of the order. Following the Agency's review and analysis of the submitted data, EPA determined, for purposes of section 5 of TSCA, that this substance will not present an unreasonable risk of injury to human health and that further regulation under section 5 is not warranted at this time.

Toxicity testing results: A 90-day subchronic dermal toxicity study in male and female rabbits showed that

the PMN substance does not cause liver and kidney toxicity. Although pitted kidneys were observed in 2 of 10 animals at each dose level, no microscopic, clinical chemistry, or urinalysis data supported an assessment of compromised renal function.

CFR Citation: 721.1536.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 27, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.1536 [Removed]

2. By removing § 721.1536.

[FR Doc. 92-18456 Filed 8-3-92; 8:45 am]

BILLING CODE 6580-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-158, RM-8025]

Radio Broadcasting Services; Palmer, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Pioneer Broadcasting Company, Inc., licensee of Station KWHL(FM), Anchorage, Alaska, seeking the substitution of Channel 238C1 for vacant Channel 239C1 at Palmer, Alaska, to accommodate the petitioner's pending modification application to retain its Class C status at Anchorage. (A new filing window will be opened for Channel 238C1 at Palmer upon the termination of this proceeding.) Coordinates used for Channel 238C1 at Palmer are 61-36-00 and 149-06-30.

DATES: Comments must be filed on or before September 18, 1992, and reply comments on or before October 5, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Paul J. Berman and Francis R. Hawkins, Jr., Esqs., Covington & Burling, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-158, adopted July 14, 1992, and released July 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., Suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18458 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-157, RM-7462]

Radio Broadcasting Services; Cleveland and Belzoni, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Larry G. Fuss, d/b/a Contemporary Communications, former licensee of Station WQAZ(FM) (now WDTL-FM), Cleveland, Mississippi, proposing the substitution of FM Channel 225C2 for Channel 224A at Cleveland, Mississippi and the modification of the license of Station WDTL-FM accordingly, and the substitution of Channel 292A for Channel 225A at Belzoni, Mississippi, and the modification of the construction permit for WJSJ(FM) accordingly. An assignment of license for Station WQAZ(FM) to Delta Radio, Inc. was consummated on March 18, 1992. Channel 225C2 can be allotted to Cleveland, Mississippi in compliance with the Commission's minimum distance separation requirements at the petitioner's present site (33-45-12 and 90-42-45). Channel 292A can be allotted to Belzoni, Mississippi, in compliance with the Commission's minimum distance separation requirements with a restriction of 8.4 kilometers (5.2 miles) southeast (33-08-06 and 90-24-58).

DATES: Comments must be filed on or before September 18, 1992, and reply comments on or before October 5, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel and Delta Radio, as follows: Barbara L. Waite, Venable, Baetjer, Howard & Civiletti, 1201 New York Ave., NW., suite 1000, Washington, DC 20005; Delta Radio, Inc., P.O. Box 159, Fayetteville, GA 30214.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-157, adopted July 13, 1992 and released July 28, 1992. Available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18462 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 92-154; FCC 92-323]

Amendment of the Amateur Service Rules to Include Novice Class Operator License Examinations in the Volunteer-Examiner Coordinator Examination System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the amateur service rules to include the preparation and administration of Novice Class operator license examinations under the volunteer-examiner coordinator (VEC) system. The proposed rules are necessary so that Novice examinations will be more efficient and lessen the chances of obtaining such licenses by fraudulent means. The effect of the proposed rules changes is to simplify and standardize the examination process.

DATES: Comments are due on or before October 9, 1992. Reply comments are due on or before November 9, 1992.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, adopted July 13, 1992, and released July 23, 1992. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW., Washington, DC. The complete text of this *notice of proposed rulemaking*, including the proposed rule amendments, may also be purchased from the Commission's copy

contractor, Downtown Copy Center (DCC), (202) 452-1422, 1990 M Street, NW., suite 649, Washington, DC 20036.

Summary of Notice of Proposed Rulemaking

1. The Commission proposes to amend the amateur service rules to include the responsibility for the preparation and administration of Novice Class operator license examinations under the volunteer-examiner coordinator (VEC) examination system. Currently, there are two separate examination systems, the VEC system and the Novice system. The informal Novice system is inefficient and susceptible to various irregularities. The VEC system is the superior system.

2. It is proposed to bring all examinations under the VEC system. The confusion that now exists because of the two different examination procedures will be avoided by having one standardized system. In addition, because of the safeguards that are employed in the VEC system, the potential for obtaining a license by fraudulent means would be minimized.

3. Under the proposal, all amateur operator license examinations given in the future would be administered in accordance with the rules and procedures applicable in the VEC system, including a small reimbursement fee for the cost of the examination, if the VECs and volunteer examiners (VEs) want to accept such fee. The proposed rules, however, if adopted, would not increase the Commission's cost.

4. The proposed rules are set forth at the end of the document.

5. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

6. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the amateur stations of Novice Class operators would not be authorized to transmit any communications the purpose of which is to facilitate the business or commercial affairs of any party. See 47 CFR 97.113(a).

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1989, 44 U.S.C. 3501-3520, and found to contain

no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burdens hours imposed on the public.

8. This notice of proposed rulemaking and the proposed rule amendments are issued under the authority of sections 4(f)(4) (A), (B), and (J), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (f)(4) (A), (B), and (J), 154(i), and 303(r).

9. A copy of the notice of proposed rulemaking will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Examinations, Radio, Volunteers.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

Proposed Rules

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303.

Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

PART 97—[AMENDED]

2. Section 97.507(c) is revised, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d) to read as follows:

§ 97.507 Preparing an examination.

(c) Each telegraphy message and each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

3. Section 97.511 is revised to read as follows:

§ 97.511 Amateur operator license examination.

(a) Each session where an examination for an amateur operator license is administered must be coordinated by a VEC. Each administering VE must be accredited by the coordinating VEC.

(b) Each examination must be administered by 3 VEs, each of whom must hold an FCC-issued amateur

operator license of the class specified below:

(1) For a Novice Class operator license examination, the administering VEs must hold Amateur Extra, Advanced, or General Class operator licenses;

(2) For a Technician Class operator license examination, the administering VEs must hold Amateur Extra or Advanced Class operator licenses;

(3) For a General, Advanced, or Amateur Extra Class operator license examination, the administering VEs must hold Amateur Extra Class operator licenses.

(c) The administering VEs must make a public announcement before administering an examination for an amateur operator license. The number of candidates at any examination may be limited.

(d) The administering VEs must issue A CSCE to an examinee who scores a passing grade on an examination element.

(e) Within 10 days of the administration of a successful examination for an amateur operator license, the administering VEs must submit the application to the Coordinating VEC. If telegraphy element credit is claimed under § 97.505(a)(5), the physician's certification and the patient's release on the license application, Form 610, must be completed.

§ 97.513 [Removed]

4. Section 97.513 is removed and reserved.

5. Section 97.521(c) is revised to read as follows:

§ 97.521 VEC qualifications.

(c) Agree to coordinate examinations for any class of amateur operator license;

6. Section 97.527 is amended by revising paragraph (a), by removing paragraph (c), and by redesignating paragraphs (d) through (g) as paragraphs (c) through (f) to read as follows.

§ 97.527 Reimbursement for expenses.

(a) VEs and VECs may be reimbursed by examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coordinating an examination for an amateur operator license.

[FR Doc. 92-18224 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 57, No. 150

Tuesday, August 4, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-122-1]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality

of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write to Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set

forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS review and analysis of the environmental impacts associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-163-01 renewal of permit 91-205-01, issued on 10-22-91.	Calgene, Incorporated.....	July 8, 1992.....	Rapeseed plants genetically engineered to express an oil modification gene.	Yolo and Imperial Counties, California.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines

Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 30th day of July 1992

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-18428 Filed 8-3-92; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Plains Electric Generation and Transmission Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Plains Electric Generation and Transmission Cooperative, Inc. (Plains) to construct facilities to serve a cardboard recycling plant to be located on the Plains Escalante Generating Station (PEGS) site. The FONSI is based on a borrower's environmental report (BER) prepared by Plains and submitted to REA covering the proposed facilities. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the Plains BER as the environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-1784.

SUPPLEMENTARY INFORMATION: The PEGS site is located approximately 2.0 miles northwest of Prewitt, New Mexico, in McKinley County. Plains plans to provide facilities to serve a proposed cardboard recycling plant on behalf of its member cooperative, Continental Divide Electric Cooperative, Inc. The recycling plant will receive scrap corrugated cardboard and convert into a new product to be used to make new cardboard boxes.

The following facilities and services will be provided as noted below:

- (1) Plains will sell or lease 17.0 acres of land on the PEGS site for the recycling plant.
- (2) Plains will construct approximately 25.0 acres of new treatment/evaporation ponds.
- (3) Plains will provide approximately 13 MW of electricity and construct 4,000 feet of 13.8 kV distribution line and associated substation facilities.
- (4) Plains will provide the steam requirement by constructing a reboiler heated by steam extracted from the PEGS turbine, a gas-fired package boiler for use when PEGS is down or service is otherwise interrupted and the necessary piping to deliver the steam to the recycling plant.
- (5) Plains will provide approximately 350 acre feet/year of process water for the recycling plant.

(6) The owners of the recycling plant will construct up to seven buildings on the site.

(7) The owners of the recycling plant will construct approximately 2200 feet of railroad spur from the main spur line coming into the PEGS site to their proposed unloading facilities.

Alternatives considered to the project as proposed were no action and alternative means of providing services.

Based on analysis of the adopted BER, REA has concluded that the construction of the proposed facilities will have no significant impact on air quality, water quality, wetlands, the 100-year floodplain, existing land uses, prime farmland, cultural resources, or flora and fauna. In addition, REA has determined that the construction of the proposed facilities will have no effect on federally-listed threatened and endangered species or designated critical habitat or species proposed for listing or proposed critical habitat.

No other potential significant impact resulting from the construction of the proposed project has been identified.

Copies of the environmental assessment and finding of no significant impact are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Rick Precek, Plains Electric Generation and Transmission Cooperative, Inc., 2401 Aztec Road, Albuquerque, New Mexico 87197.

Dated: July 28, 1992.

George E. Pratt,
Deputy Administrator—Program Operations.
[FR Doc 92-18427 Filed 8-3-92; 8:45 am]
BILLING CODE 3410-15-F

Soil Conservation Service

Deadman-Bullard Watershed, OR

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Deadman-Bullard Watershed, Lake County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 SW.

Third Avenue, room 1640, Portland, Oregon 97204, telephone (503) 326-2751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack P. Kanalz, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Deadman-Bullard Watershed, Oregon; Notice of a Finding of No Significant Impact

The project concerns a plan for flood control.

The planned works of improvement include one flood retarding structure, six debris basins, one flood channel improvement with inlet structure, and five road crossings.

The notice of a finding of no significant impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack P. Kanalz.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: July 23, 1992.
Jack P. Kanalz,
State Conservationist.
[FR Doc. 92-18324 Filed 8-3-92; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[a-570-820]

Initiation of Antidumping Duty Investigation: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 4, 1992.

FOR FURTHER INFORMATION CONTACT: James Maeder or Brian Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4929 or (202) 377-1766.

INITIATION OF INVESTIGATION:

The Petition

On July 8, 1992, we received a petition filed in proper form by the U.S. Waterworks Fittings Producers Council and its individual members, Clow Water Systems Company, Tyler Pipe Industries, Inc., and Union Foundry Company (petitioners). The U.S. Waterworks Fittings Producers Council is an *ad hoc* coalition representing U.S. producers of certain compact ductile iron waterworks (CDIW) fittings and accessories thereof. Petitioners submitted amendments to the petition on July 13, 17, 20, 22, and 24, 1992. In accordance with 19 CFR 353.12, the petitioners allege that certain CDIW fittings and accessories thereof from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and the petition is filed on behalf of the U.S. industry producing the products subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The products covered by this investigation are (1) certain compact ductile iron waterworks (CDIW) fittings of 3 to 16 inches nominal diameter regardless of shape, including bends, tees, crosses, wyes, reducers, adapters, and other shapes, whether or not cement lined, and whether or not covered with bitumen or similar substance, conforming to AWWA/ANSI specification C153/A21.53, and rated for water working pressure of 350 PSI; and

(2) certain CDIW fittings accessories which typically consist of a standard ductile iron gland, a styrene butadiene rubber (SBR) gasket, the requisite number of Cor-Ten steel or ductile iron T-head bolts, and hexagonal nuts, whether sold separately or together in kits (also called accessory packs), for fittings in sizes 3 to 16 inches, conforming to AWWA/ANSI specification C111/A21.11, and rated for water working pressure of 350 PSI.

The types of CDIW fittings covered by this investigation are compact ductile iron mechanical joint waterworks fittings and compact ductile iron push-on joint waterworks fittings, both of which are used for the same applications. CDIW fittings are used to join water main pressure pipes, valves, or hydrants in straight lines, and change, divert, divide, or direct the flow of raw and/or treated water in piping systems. CDIW fittings attach to the pipe, valve, or hydrant at a joint and are used principally for municipal water distribution systems.

CDIW fittings accessories are used to join mechanical joint CDIW fittings to pipes. The accessories ensure the completeness of the seal between the CDIW fitting and pipe. Mechanical joint fittings must be used with CDIW accessories. Push-on fittings do not require CDIW accessories.

CDIW fittings are classifiable under subheading 7307.19.30.00, of the Harmonized Tariff Schedule of the United States (HTSUS). Standard ductile iron glands are classifiable under HTS subheading 7325.99.10.00.3, styrene butadiene rubber gaskets are classifiable under HTS subheading 4016.93.00.00.3, T-head bolts of steel or ductile iron with hexagonal nuts are classifiable under HTS subheading 7318.15.20.90.2, T-head bolts of steel or ductile iron without hexagonal nuts are classifiable under HTS subheading 7318.16.00.80.1, and hexagonal nuts are classifiable under HTS subheading 7318.16.00.00.4.

Nonmalleable cast iron fittings and full-bodied ductile fittings are specifically excluded from the scope of this investigation. Nonmalleable cast iron fittings have little ductility and are generally rated only to 150 or 250 PSI. Full-bodied ductile fittings have a longer body design than a compact fitting because the straight section of the body is deleted to provide a more compact and less heavy fitting without reducing strength or flow characteristics. In addition, the full-bodied ductile fittings are thicker than the compact fittings. Full-bodied fittings are made of either gray iron or ductile iron, in sizes 3 inches to 48 inches, and conform to

AWWA/ANSI specification C110/C21.10. In addition, compact ductile iron flanged fittings are excluded from the scope of this investigation.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

In this petition, petitioners provided two methodologies for calculating United States price (USP). Petitioners' primary methodology used a March 1992 price list of a U.S. importer of the subject merchandise as the basis for USP. In calculating USP, petitioners deducted 50 percent for U.S. value-added expenses which included speculative amounts for selling expenses. For purposes of this initiation, we have relied on petitioners' secondary methodology for calculating USP because petitioners' primary methodology may overestimate the amount of U.S. value-added expenses which should be properly deducted from USP. Petitioners' secondary methodology used IM-146 import statistics from January through April 1992, of subject merchandise from the PRC for calculating USP. No adjustments were made to petitioners' calculation using the IM-146 statistics. If it becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review all of the bases for the petitioners' estimated dumping margins in determining BIA.

Petitioners contend that the foreign market value (FMV) of PRC-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy (NME) countries. The PRC is presumed to be an NME within the meaning of section 771(18)(c) of the Act, and the Department has treated it as such in previous investigations (See, Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the PRC, 57 FR 29705 (July 6, 1992)). In the course of this investigation, parties will have the opportunity to address this NME determination and provide relevant information and argument on this issue. In addition, parties will have the opportunity in this investigation to submit comments on whether FMV should be based on prices or costs in the NME (see, Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty order: Chrome-Plated

Lug Nuts From the People's Republic of China, 57 FR 15052 (April 24, 1992)).

Because of the extent of central control in a NME, the Department further considers that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific rates. (See, Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588, (May 6, 1991), for a discussion of the information the Department considers appropriate in this regard.)

In accordance with section 773(c) of the Act, FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the PRC government determines which factories shall produce for export to the United States, for purposes of this investigation, we intend to base FMV only on those factories in the PRC which are known to produce CDIW fittings and accessories thereof for export to the United States.

Petitioners calculated FMV on the basis of the valuation of the factors of production. In valuing the factors of production, petitioners used India as a surrogate country. For purposes of this initiation, we have accepted India as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioners used one of the petitioners' factors for raw material inputs, energy, and labor for constructed value (CV). The raw material, energy and labor factors for producing certain CDIW fittings and accessories thereof are based on one of the petitioner's actual experience through December 1991. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by one of the petitioners.

In accordance with the hierarchy for preferred input values as set forth in the notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China (PRC), 57 FR 21058 (May 18, 1992) (Comment 4), petitioners first used Indian published, publicly available information to value the factors of production before resorting to unclassified information contained in U.S. government cables or to their own costs of production. Petitioners based the value of raw material costs for fluorite, limestone, silicon, and copper scrap on Indian published, publicly available

information. Petitioners based the value of raw material costs for pig iron, coke, and ferrosilicon on cable information from the U.S. consulate in India.

Petitioners based raw material costs for ferrosilicon magnesium, cement lining, and bituminous coating on one of the petitioners' costs as of December 1991. Petitioners based the natural gas value on Indian published, publicly available information, labor and electricity values on cable information from the U.S. consulate in India, and the oxygen value on one of petitioners' costs of production.

Pursuant to section 773(c) of the Act, petitioners added to CV the statutory minima of 10 percent for general expenses and eight percent of profit, and a percentage of the cost of manufacture for packing expenses.

Less Than Fair Value Comparisons

As discussed in the "United States Price and Foreign Market Value" section of this notice, we have relied on petitioners' alternative methodology for calculating USP. Based on this methodology, we calculated a margin of 127.38 percent.

Initiation of Investigation

We have examined the petition on certain CDIW fittings and accessories thereof from the PRC and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain CDIW fittings and accessories thereof from the PRC are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by August 24, 1992, whether there is a reasonable indication that imports of certain CDIW fittings and accessories thereof from the PRC are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in this investigation being terminated; otherwise, this investigation will proceed to conclusion in accordance with the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-18337 Filed 8-3-92; 8:45 am]

BILLING CODE 3510-06-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on August 10-11, 1992, at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA., telephone: 508-774-6800. The meeting will begin at 10 a.m. on August 10, and reconvene at 9 a.m. on August 11.

The meeting will begin on August 10 with reports from the Council Chairman, Council Executive Director, National Marine Fisheries Service Regional Director, and Northeast Fisheries Science Center liaison, Mid-Atlantic Council liaison, and representatives from the Department of State, Coast Guard, Fish and Wildlife Service and Atlantic States Marine Fisheries Commission. Following these reports, the Herring Oversight Committee will report on a proposed management plan, including a control date. The Groundfish Oversight Committee will report on the progress of Amendment #5 to the Northeast Multispecies Plan. There will also be a report from the Monkfish Oversight Committee.

On August 11, there will be an election of officers. This will be followed by an overview of Individual Transferable Quota (ITQ) systems and possible application of an ITQ program to the scallop fishery presented by Dr. Jon Sutinen. The meeting will conclude with a report from the Scallop Oversight Committee.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: July 30, 1992.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18422 Filed 8-3-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT), and Enforcement Consultants (EC) will hold public meetings the week of August 10, 1992.

The EC meeting will convene on August 10, in the conference room of the Council office, 2000 SW. First Avenue, Suite 420, Portland OR. The EC meeting will begin at 9 a.m. The EC will then join the GMT on the afternoon of August 10 and the morning of August 11 for a joint session.

Except for a change in location on August 12, when the GMT will meet in the ODFW Director's conference room in that building, the GMT will meet in the conference room of the Pacific States Marine Fisheries Commission in the Oregon Department of Fish and Wildlife (ODFW) building, 2501 SW. First Avenue, Suite 200, Portland, OR. The GMT meeting will begin on August 10 at 1 p.m. and adjourn at 4:30 p.m. on August 13.

The EC will begin its meeting by reviewing the draft individual quota (IQ) program and working on option packages related to enforcement issues. On the afternoon of August 10 and the morning of on August 11, the GMT will meet jointly with the EC regarding development of a proposed IQ program for the groundfish fishery. On August 11 at 1 p.m., the GMT will begin a review of stock assessment reports for several important groundfish species. This review may result in significant changes to the commercial fishing regulations in 1993. The GMT will also discuss regulations to limit by-catch of salmon in the 1993 Pacific whiting fisheries, allocation of the Pacific whiting resource among shore-based and at-sea fish processing sectors, proposed changes to trawl gear regulations, and a proposed data collection program.

Other issues of importance to the West Coast groundfish industry may also be discussed. The GMT will prepare recommendations on these issues for presentation to the Council at its upcoming September 16-18 meeting in Milbrae, CA.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 (503) 326-6352.

Dated: July 30, 1992.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18423 Filed 8-3-92; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-00XX; FAR Case 91-85]

OMB Clearance Request for Service Contracting Solicitation Provision

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a new OMB clearance for Service Contracting Solicitation Provision "Identification of Uncompensated Overtime."

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Service Contracting/ Solicitation Provision "Identification of Uncompensated Overtime."

DATES: Comments may be submitted on or before October 5, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Department of Defense (DOD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA), have agreed to revise Federal Acquisition Regulation (FAR) parts, 5, 10, 15, 16, 17, 37, 44, 48, and 52 to implement the Office of Federal Procurement Policy (OFPP) Policy Letter 91-2, Service Contracting, as well as to make other revisions, primarily to part 37. One of the revisions implements the statutory requirements

of section 834, Public Law 101-510, Governmentwide by adding language to FAR 15.608 concerning uncompensated overtime and a prescription at 37.105(e) for a new solicitation provision, "Identification of Uncompensated Overtime", at 52.237-XX. Although the statutory requirement applies only to DOD, both GSA and NASA have agreed the language is appropriate for Governmentwide use.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 18,200; responses per respondent, 1; total annual responses, 18,200; preparation hours per response, .50; and total response burden hours, 9,100.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications of justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 510-4755. Please cite OMB clearance for FAR case 91-85, Service Contracting/ Solicitation Provision "Identification of Uncompensated Overtime", in all correspondence.

Dated: July 22, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-18326 Filed 8-3-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0021]

OMB Clearance Request for Clean Air and Water Certification

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0021).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Report Control Number 9000-0021, Clean Air and Water Certification.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501-3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to improve environmental quality. Accordingly, Executive agencies must conduct their acquisition activities in a manner that will result in effective enforcement of the Clean Air Act (42 U.S.C. 7401, *et seq.*) and the Clean Water Act (33 U.S.C. 1251, *et seq.*). The information required by the Clean Air and Water Certification is used to determine a contractor's compliance with these laws. A determination of noncompliance by the contracting officer requires notifying the agency head or designee who, in turn, notifies the Environmental Protection Agency (EPA) Administrator, or a designee, in writing. Government contracting offices use the information to determine a firm's eligibility for award of a contract and to provide information to the EPA.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 83,400; responses per respondent, 20; total annual responses, 1,668,000; preparation hours per response, .01666; and total response burden hours, 27,800.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0021, Clean Air and Water Certification, in all correspondence.

Dated: July 22, 1992.

Beverly Fayson,

Far Secretariat.

[FR Doc. 92-18327 Filed 8-3-92; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada

concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/CA(EU)-20, for the transfer of 193.5 kilograms of uranium metal, enriched to 19.95 percent in the isotope uranium-235 from the Federal Republic of Germany to Canada, for fabrication of fuel elements for the NRU reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on July 29, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 92-18440 Filed 8-3-92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award Two Cooperative Agreements Under the State Heating Oil Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make the following restricted eligibility assistance awards: DE-FC01-92EI23621, State of North Dakota; DE-FC01-92EI23623, State of Kansas.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7, it is making two (2) restricted eligibility financial assistance awards under the above listed Cooperative Agreements. The awards will total \$8,850 (DOE's share is \$4,423, and the recipients share is \$4,427). The cooperative agreements will permit the involved states to complete and receive payment for conducting semi-monthly surveys to collect state level residential No. 2 heating oil and propane prices during the heating season. This data will provide Congress with information to be utilized in analyzing the heating fuel markets with respect to price versus cold weather spikes.

SCOPE: The objective of the proposed cooperative agreements is to analyze the heating fuel markets, during the heating season, in order to determine these States' specific program plans and individual needs for heating fuels statistics.

ELIGIBILITY: Out of a universe of 50 potentially eligible states, Congress has mandated that data be collected from only primary residential fuel consuming states. As a result of this mandate, 22 state heating oil and propane program (SHOPP) cooperative agreements were awarded in August 1991. Two (2) four-year SHOPP cooperative awards will be awarded in August 1992, one (1) to the State of North Dakota, and one (1) to Kansas. These States are identified as primary residential fuel consuming States. These States have unique qualifications and capabilities to provide the necessary information, based on their participation in this program in prior heating seasons and have established data collection relationships with heating oil distributors and refiners. Accordingly, it has been determined that the objectives of this program may only be achieved by the 22 States previously identified under U.S. DOE's Notice of Intent to Make Restricted Eligibility SHOPP Cooperative Agreement Awards (issued during July-August 1991 timeframe) and the two (2) States identified herein.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Nick Demer, PR-322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Operations Division "B", Office of Procurement, Assistance and Program Management.

[FR Doc. 92-18437 Filed 8-3-92; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Northwest Washington Transmission Project; Floodplain and Wetland Involvement Notification

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Floodplain and Wetland Involvement, Whatcom and Skagit Counties, WA.

SUMMARY: BPA and Puget Sound Power and Light (Puget Power) are jointly proposing to rebuild portions of their transmission systems in Northwest Washington. Under the proposal, BPA would replace its single-circuit 230,000 volt (230-kV) transmission line between the BPA Custer Substation, northwest of Bellingham, Washington, and Puget Power's Sedro Woolley Substation with a double-circuit 230-kV transmission line that may be built with a 500-kV capacity, but initially operated at 230

kV. Puget Power would replace the conductors on one 115-kV line from the BPA Bellingham Substation to the Puget Bellingham Substation, and two new 115-kV lines of approximately 1.3 miles would also be constructed from the BPA Bellingham Substation to a nearby existing 115-kV line. The rebuilt Custer-Sedro Woolley line would cross the floodplains of the Nooksack, Samish, and Skagit Rivers, as well as five other creeks, two small lakes, and associated wetlands. Several isolated wetlands would also be crossed, and wetlands are

located at the Bellingham and Custer substations.

DATES: Any comments are due to the project address on or before August 31, 1992.

FOR FURTHER PROJECT INFORMATION

CONTACT: John Taves—EFBC, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208-3621, (503) 230-4995.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

OR THE STATUS OF THE RELATED NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REVIEW, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: The following table lists the floodplains that would be crossed, in order from north to south, along the Custer to Sedro Woolley rebuild portion of the project:

Name	Location	Tributary to	Approximate length of crossing
Nooksack River	T39N, R2E, S9	Bellingham Bay	4200'
Ten Mile Creek	T39N, R2E, S23	Nooksack River	300-500'
Squalicum Creek	T38N, R3E, S9	Bellingham Bay	250-400'
Carpenter Creek	T38N, R4E, S30	Lake Whatcom	300-400'
Olson Creek	T38N, R4E, S30	Lake Whatcom	300-400'
Mirror Lake	T37N, R5E, S30	Aqueduct	300-500'
Samish River	T36N, R5E, S7	Samish Bay	1000'
Cranberry Lake	T36N, R5E, S31	Swede Creek	1000'
Hansen Creek & Skagit River	T35N, R5E, S20	Skagit River	3500'
		Skagit Bay	

In addition, an alternative route segment for this portion of the project would also cross the Samish River upstream of the crossing of the proposed route in T37N, R5E, section 31 and T36N, R5E, section 6. This crossing would be approximately

2000 feet in length. The other proposed actions would not involve floodplains.

The following table lists the wetlands that are within the existing corridor and the width of the existing corridor. Cowardin Classifications (USFW) are given to identify the wetland types. In

general, most of the wetlands are either palustrine (P) with vegetation that is adapted to saturated conditions (EM) and are seasonally dry (C), or riverine systems/creeks (R) that are permanently flowing (H) or intermittent (C). Listed from north to south they are:

Cowardin classification	Location	Corridor width
PEMC/Custer SS	19, 20/35N-5E	Substation
PEMCd/	5/39N-2E	392.5
PEMCA/Nooksack Floodplain	9/39N-2E	*392.5
PEMCx	15/39N-2E	392.5
PEMCx/Tenmile Creek	23/39N-2E	392.5PEM
Cx/Deer Creek	24/39N-2E	392.5
PEMCx/IR Photo B-3	25/39N-E	392.5
PEMA/IR Photo B-3	31/39N-3E	392.5
POWH/IR Photo B-3	31/39N-3E	392.5
PSSC/IR Photo B-4	32/39N-3E	*392.4
PEMA/IR Photo B-5	5/38N-3E	*392.5
PEMC/IR Photo B-7	4/38N-3E	382.5
PEMA/IR Photo B-8	9/38N-3E	382.5
R3OWH/Squalicum Creek	9/38N-3E	392.5
PEMC/Pasture	9/38N-3E	400
PEMC/Bellingham Substation	10/38N-3E	*Substation
R3OBH/Outlet from Toad Lake	15/38N-3E	400
R4SBC/Squalicum Creek	24/38N-4E	400
R4SBC (X4) Olsen & Carpenter Creek	30/38N-4E	400
R4SB/Smith Creek	33/38N-4E	400
PFOC/Mirror Lake	30/37N-5E	400
R3UBH (x3)	31/37N-5E	262.5
R3UBH/Trib. to Samish River	6/36N-5E	262.5
PFOC/Samish River Floodplain	7/36N-5E	262.5
R3UBH (x2) Mill Creek	18/36N-5E	262.5
R3UBH (x2) Thunder Creek	19/36N-5E	275
PSSC/Cranberry Lake	6/35N-5E	262.5
PABF/Trib. to Hansen Creek	7/35N-5E	262.5
R3UBH (x3)/Brickyard & Hansen Creek	7/35N-5E	262.5
PEMCx/Brickyard Creek	18/35N-5E	262.5
PFOC/Hansen Creek	20/35N-5E	262.5

All of the wetlands along the corridor north of Bellingham were observed on infra-red photographs. Wetlands south of Bellingham were identified from National Wetland Inventory maps. Asterisks indicate the wetlands that will be physically impacted by the proposed activity.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain/wetlands assessment on this proposed action. This floodplain/wetlands assessment will be included in the Draft Environmental Impact Statement (EIS) and the Floodplain Statement of Findings will be included in the Final EIS to be prepared for the project. The Notice of Intent to prepare an EIS was published in the *Federal Register* on November 15, 1991, scoping meetings were held in February 1992, and the Draft EIS is scheduled to be circulated for public review and comment in March 1993. Maps and further information are available from BPA at the address shown above.

Issued in Portland, Oregon, on July 22, 1992.

John S. Robertson,
Deputy Administrator.

[FR Doc. 92-18436 Filed 8-3-92; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 11169-000 North Carolina]

H & H Properties; Notice of Availability of Environmental Assessment

July 28, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the proposed Avalon Dam Project located at the existing dam on the Mayo River, near Rockingham County, North Carolina, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch,

room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18342 Filed 8-3-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER92-647-000]

Central Illinois Public Service Co., Notice of Filing

July 29, 1992.

Take notice that on July 21, 1992 Central Illinois Public Service Company (Central Illinois) tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18343 Filed 8-3-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP92-579-000]

Consolidated Edison Company of New York, Inc., Notice of Application for Blanket Certificate and Request Under Blanket Authorization

July 28, 1992

Take notice that on July 6, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) of Four Irving Place, New York, New York 10003, filed an application under Section 7 of the Natural Gas Act and Sections 157.23 and 284.224 of the Commission's Regulations (Regulations) for a blanket certificate of public convenience and necessity.

Con Edison requests authority: (1) to make sales in interstate commerce for resale of natural gas subject to the Commission's NGA jurisdiction without rate and source restrictions and (2) to sell, transport, and assign gas pursuant to Section 284.224 of the Regulations upon the same terms and conditions as

apply to intrastate pipelines. Con Edison requests pregranted authority to abandon sales made pursuant to the first authorization, waiver of parts 154 and 271 of the Regulations and assurance that the requested authorizations will not impair Con Edison's NGA Section 1(c) exemption from the Commission's jurisdiction with respect to activities other than those conducted pursuant to the requested authorizations, all as more fully set forth in the application.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before August 11, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or petitions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, Con Edison will not have appear or be represented at any hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18358 Filed 8-3-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-207-000]

Equitrans, Inc., Notice of Proposed Changes in FERC Gas Tariff

July 29, 1992

Take notice that Equitrans, Inc. ("Equitrans"), on July 27, 1992 filed the following tariff sheets for inclusion in its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 1
Second Revised Sheet No. 12
First Revised Sheet No. 177E
Original Sheet No. 177F

Equitrans states that the purpose of the filing is to reflect Tennessee Gas Pipeline Company's ("Tennessee") June 30, 1992 filing to recover new transition demand costs, effective July 1, 1992. Equitrans states that Tennessee's filing is the first upstream take-or-pay direct billing filing directed toward Equitrans.

Accordingly, Equitrans is submitting tariff sheets to implement "as-billed" flowthrough in accordance with Order Nos. 528 and 528-A. The total amount of

Tennessee billings to be recovered by Equitrans is \$50,472 over a 24 month period. Equitrans requests an effective date of August 1, 1992, and further requests that any and all waivers necessary be granted to make the filing effective on August 1, 1992.

No additional filing to recover take-or-pay costs of upstream pipelines are anticipated by Equitrans.

Equitrans states that copies of this filing are being served upon Equitrans' customers as well as interested state commissions.

Any person desiring to be heard or protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before August 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18353 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

Docket No. RP88-259-056

Northern Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

July 29, 1992

Take notice that Northern Natural Gas Company (Northern), on July 24, 1992, tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, proposed to be effective January 17, 1992:

Sub Thirty-Fifth..	Revised Sheet No....	88
Sub Forty-Seventh.	.....do.....	88
Sub Twenty-Fifth.	.....do.....	94
Sub Twenty-First.	.....do.....	95
Sub Twenty-Fourth.	.....do.....	98
Sub Twenty-Seventh.	.....do.....	99
Sub Twenty-Third.	.....do.....	100
Sub Twentieth.....	.....do.....	105
Sub Fourteenth....	.....do.....	105A
Sub Twentieth.....	.....do.....	110
Sub Eighteenth....	.....do.....	111

Sub Nineteenth....	.....do.....	112
Sub Twentieth....	.....do.....	113
Sub Twentieth....	.....do.....	114
Sub Fifteenth.....	.....do.....	123
Sub Fifth.....	.....do.....	126
Sub Fourth.....	.....do.....	127
Sub Fourth.....	.....do.....	128
Sub Third.....	.....do.....	129
Sub Sixth.....	.....do.....	130
Sub Sixth.....	.....do.....	131

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order issued July 10, 1992, in Docket No. RP88-259-052. Northern further states that copies of the filing have been mailed to each of its customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18355 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-85-008]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

July 29, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 27, 1992 tendered for filing the tariff sheets listed on appendix A attached to the filing, to its FERC Gas Tariff, Original Volume No. 1-A.

Panhandle proposes that the tariff sheets listed on appendix A become effective September 1, 1992.

Panhandle states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled Village of Pawnee, Illinois, et al., vs. Panhandle Eastern Pipe Line Company, in the subject docket. Under the terms of the Agreement, certain small Customers as defined in article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and

up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Panhandle changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. The tariff sheets listed on appendix A reflect these adjustments in the monthly base period for each Small Customer. These tariff sheets also reflect abandonments of firm sales service authorized by the Commission, as more fully described in the filing.

Panhandle states that copies of this filing have been forwarded to all customers subject to the tariff sheets and the respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18345 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-162-001]

Superior Offshore Pipeline Co.; Notice of Compliance Filing

July 29, 1992.

Take notice that on July 24, 1992 Superior Offshore Pipeline Company ("SOPCO"), filed the following listed tariff sheets for inclusion in its First Revised Volume No. 1 of its FERC Gas Tariff in compliance with FERC "Order Accepting and Suspending Certain Tariff Sheets Subject To Refund And Conditions, Rejecting Certain Tariff Sheets, Requiring Refiling Of Tariff Sheets, And Denying Motion To Consolidate," dated June 26, 1992:

1. SOPCO states that all tariff sheets are revised to include in the pagination title the term "Original" on sheet to conform with the pagination on the electronic version of the tariff and to delete reference in the electronic version

the statement that the sheets were issued to comply with the Commission order in Docket No. RM91-11-000.

2. First Revised Sheet No. 2

Superseding Original Sheet No. 2.

3. First Revised Sheet Nos. 13, 25, and 26 Superseding the respective Original Sheets.

4. First Revised Sheet Nos. 14 and 15 Superseding the respective Original Sheets.

5. First Substitute Original Sheet No. 20 Superseding Original Sheet No. 20.

6. First Substitute Original Sheet No. 22 Superseding Original Sheet No. 22.

7. First Revised Sheet No. 35, Paragraph 2.2 and First Revised Sheet No. 36, Paragraph 3.2 Superseding the respective Original Sheets (and adding the respective extension sheets, 35a and 36a).

8. First Revised Sheet No. 47 superseding Original Sheet No. 47.

9. Sheet Nos. 53, 54, and part of Sheet No. 55 have been deleted and reserved for future use.

First Substitute Original Sheet No. 53 Superseding Original Sheet Nos. 53 and 54 has been inserted.

First Revised Sheet No. 55 is being submitted to reflect only Section 17 of the General Terms and Conditions.

10. First Revised Sheet Nos. 76 through 78 Superseding the respective Original Sheets are submitted (and Original Sheet Nos. 78a, 78b, 78c, 78d, and 78e have been added) to provide a complete list of Index of Purchasers as directed by appendix B of the June 26 Order.

SOPCO states that copies of the filing were served on SOPCO's customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-18344 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-52-000]

Viking Gas Transmission Co.; Prefiling Conference

July 28, 1992.

Take notice that a prefiling conference will be convened in this proceeding on August 27, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, Hearing Room 1, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of the proposal submitted by Viking Gas Transmission Company to comply with Order No. 836.

All interested parties are invited to attend. However, attendance at the conference will not confer party status.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18359 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-39-NG]

CNG Trading Co., Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada, Mexico and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CNG Trading Company blanket authorization to import up to 200 Bcf and export up to 200 Bcf of natural gas from and to Canada, Mexico and other countries over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-18443 Filed 8-3-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-38-NG]

CNG Producing Co.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada, Mexico and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CNG Producing Company blanket authorization to import up to 200 Bcf and export up to 200 Bcf of natural gas from and to Canada, Mexico and other countries over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-18444 Filed 8-3-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-52-NG]

Continental Energy Marketing, LTD.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Continental Energy Marketing Ltd. blanket authorization to export to Canada a total of 75 Bcf of natural gas over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1992.
Charles F. Vacek,
*Deputy Assistant Secretary for Fuels
 Programs, Office of Fossil Fuels.*
 [FR Doc. 92-18442 Filed 8-3-92; 8:45 am]
 BILLING CODE 6450-01-M

[FE Docket No. 92-45-NG]

**Cornerstone Natural Gas Co.; Order
 Granting Blanket Authorization To
 Import and Export Natural Gas**

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Cornerstone Natural Gas Company (Cornerstone) authorization to import up to 100 Bcf of natural gas and export up to 100 Bcf of natural gas from and to Canada and Mexico, over a two-year term beginning on the date of first delivery after October 4, 1992, the date Cornerstone's current authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 29, 1992.
Charles F. Vacek,
*Deputy Assistant Secretary for Fuels
 Programs, Office of Fossil Energy.*
 [FR Doc. 92-18445 Filed 8-3-92; 8:45 am]
 BILLING CODE 6450-01-M

[FE Docket No. 92-42-NG]

**Kimball Energy Corporation; Order
 Granting Blanket Authorization To
 Export Natural Gas to Mexico**

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of an Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Kimball Energy Corporation blanket authorization to export to Mexico a total of 75 Bcf of natural gas over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30

p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1992.
Charles F. Vacek,
*Deputy Assistant Secretary for Fuels
 Programs, Office of Fossil Energy.*

[FR Doc. 92-18441 Filed 8-3-92; 8:45 am]
 BILLING CODE 6450-01-M

Western Area Power Administration

**Floodplain/Wetlands Involvement
 Determination for the Casper Area
 Transmission Line Modifications
 Project: Natrona and Carbon Counties,
 WY**

AGENCY: Western Area Power
 Administration, DOE.

ACTION: Statement of findings.

SUMMARY: The Western Area Power Administration (Western) proposes to remove several transmission line and telephone line segments located in Carbon and Natrona Counties, Wyoming. Many of the transmission lines were constructed to link the Seminoe, Kortes, and Alcova powerplants with the 115-kilovolt (kV) and 69-kV transmission line systems serving Casper, Wyoming, and surrounding areas. Currently, the powerplants, are linked to the power grid through a system of upgraded transmission lines built by Western in the late 1970's and early 1980's.

Western is now proposing to remove abandoned and obsolete segments of this system including about 48-miles of transmission line supported on wood-pole H-frame structures, and 30-miles of phone line supported on single wood poles. Approximately 1,090 structures would be removed, sixty-seven of which are located in the apparent 100-year floodplain of the North Platte River. According to 10 CFR 1022.3(b), DOE shall incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decision making processes. Executive Order 11988, "Floodplain Management," states that if an agency proposes to allow an action to be located in a floodplain, the agency is required to consider alternatives to avoid adverse effects in the floodplain. Therefore, Western prepared a Floodplain/Wetlands Assessment for the project. Executive Order 11990, "Protection of Wetlands," requires a finding (1) that there is no practicable alternative to such construction and (2) that the proposed action includes all practicable measures

to minimize harm to wetlands which may result from such use.

The North Platte River supports riparian habitat along much of its length. At the transmission line crossings vegetation is comprised of a narrow band of willows and cottonwoods. Much of the historic floodplain is currently irrigated pastureland.

Access to most of the transmission lines and telephone lines is provided by existing construction and operational maintenance trails. Construction activity associated with pole removal involves passenger vehicles, cable winding equipment, and truck-trailers large enough to haul out the 65- to 75-foot poles. Construction would be timed and coordinated with local authorities to minimize impacts on local traffic.

It would not be necessary for equipment to cross the North Platte River except at existing roads and bridges. Therefore, adverse impacts such as sedimentation or channel bank destabilization, or destruction of wetlands or riparian habitat are not anticipated for this project.

No new trails or staging areas would be allowed unless the contractor obtains necessary permits from the Bureau of Land Management. Staging or access in or along floodplains, especially in areas containing riparian or wetland vegetation, would be prohibited. Construction would be coordinated with landowners to minimize impacts on irrigated land.

Given the proposed action and mitigation measures, alternative actions were not considered necessary or practical. The proposed action would have a positive or beneficial impact on visual resources and land use along the North Platte River.

The proposed action, removal of transmission line structures and conductor, and removal of telephone poles, would not affect existing drainage patterns or flood storage volume. No watercourses would be altered or relocated as a result of the project. Riparian and wetland vegetation associated with the North Platte River would not be affected.

The notice of floodplain/wetland involvement for the proposed action was published in the *Federal Register* on Thursday, March 12, 1992 (Vol. 57, No. 49, page 8751). No comments were received regarding the proposed action.

Prior to implementing the proposed action, Western will endeavor to allow at least 15 days of public review after the date of publication of this statement of findings.

**FOR FURTHER INFORMATION OR COPIES
OF THE FLOODPLAIN/WETLANDS
ASSESSMENT CONTACT:**

Mr. Robert H. Jones, Acting Area
Manager, Loveland Area Office,
Western Area Power Administration,
P.O. Box 3700, Loveland, CO 80539-
3003, (303) 490-7200.

Mr. Bill Karsell, Director, Division of
Environmental Affairs, Western Area
Power Administration, P.O. Box 3402,
Golden, CO 80401-3398, (303) 231-
1706.

Issued at Golden, Colorado, July 21, 1992.

William H. Clagett,
Administrator.

[FR Doc. 92-18438 Filed 8-3-92; 8:45 am]

BILLING CODE 6450-01-M

**FEDERAL COMMUNICATIONS
COMMISSION**

[General Docket No. 91-2; DA 92-1028]

**Information on Application Filing
Procedures for the Interactive Video
and Data Service**

Released: July 31, 1992.

On January 16, 1992, the Commission adopted a Report and Order (R&O) in GEN Docket No. 91-2 establishing an Interactive Video and Data Service (IVDS) under Part 95 of its Rules (47 CFR part 95). In the R&O the Commission stated that it would announce by Public Notice the date on which it would begin accepting applications for IVDS system licenses as well as other pertinent information concerning licensing IVDS systems. On July 17, 1992, the Commission released a Public Notice opening a filing window for service area #1. The purpose of this Public Notice is to establish an IVDS application filing window and explain the filing procedures necessary for filing application for an IVDS system license in service areas #2 (Los Angeles, CA), #3 (Chicago, IL), and #4 (Philadelphia, PA). For a description of the service areas see the Commission's January 24, 1992, Public Notice, Report No. 92-40.

Applications for an IVDS license for these three service areas must be received at the official filing location listed herein during the three-day filing period beginning September 1, 1992, and ending September 3, 1992. Applications received before September 1, or after September 3, 1992, will be dismissed as untimely filed. The back-up filing procedure and the extra day policy do not apply to IVDS applications.¹

¹The back-up filing procedure enables certain applicants to file late if they follow certain procedures and if their applications are lost or

Note: Applicants may have an interest in only one application in each service area.

All applications must be filed on FCC Form 155 (a separate application is required for each service area) and each application must be accompanied by a separate check made out to the Federal Communications Commission or FCC in the amount of \$1,400.00. Failed payment or postdated checks will result in the application being dismissed with prejudice. In Section I of Form 155, the "Applicant Name" block must include the applicant's name (either typed or printed) followed by the signature (original) of an individual authorized to sign the application. The mailing address should be the address to which the applicant wishes official correspondence sent. The number of the service area being applied for (either "002", "003", or "004") must be specified in the box labeled "Call Sign". The fee type code entered in Column (A) must be "PAI", the fee multiple in Column (B) must be "40", and the fee due in column (C) must be \$1,400.00. Each individual application (Form 155) and accompanying check (\$1,400.00) must be in an individually sealed envelope and properly addressed (see mail-in address). Multiple applications, properly packaged, may be delivered in one larger, properly addressed container.

The Commission's official filing location for these applications is Mellon Bank in Pittsburgh, PA. Applications may be delivered to Mellon Bank in one of two ways, either mailed in or walked in.

Mail-ins

Filings mailed in must be mailed to: Federal Communications Commission, Interactive Video and Data Service, P.O. Box 358365, Pittsburgh, PA 15251-5365. (This address must be used on the individually sealed envelopes.)

Walk-Ins

Pursuant to the provisions of 47 CFR 0.401(b)(2), applications may be hand-delivered. Applications hand-delivered must be in a sealed envelope with the mail-in address specified above on its face. A separate envelope is needed for each application and accompanying

delayed in transit to Pittsburgh, Pennsylvania. The extra day policy allows certain applicants to file one day after the filing deadline. These policies, however, only apply to time critical, feeable applications previously filed in Washington, DC, and IVDS applications, which are new, have never been filed in Washington. Thus, if an IVDS application is received in Pittsburgh on September 4, 1992, the day after the filing window closes, or thereafter (regardless of the reason for delay), the application will be dismissed as untimely filed.

check. Hand-delivered applications must be delivered to One Mellon Bank Center, 500 Grant Street, Pittsburgh, PA. 15258 anytime between 12:01 a.m. September 1, 1992, and 11:59 p.m. September 3, 1992.

The street entrance to the Window Filing location is on the Grant Street side of the building (across from the US Air ticket office). Signs will be posted in both One Mellon Bank Center and Three Mellon Bank Center indicating the Filing Window location. The "deliverer" should proceed directly to the street entrance described above and identify himself (herself) as having applications for the IVDS filing window. If a copy is proffered for stamping, one receipt only will be date stamped per application and returned.

CAUTION: The filing instructions incorporated in this Public Notice are only in effect for the purposes stated herein. These procedures override any other procedures that may be set forth in the Commission's Rules. Failure to follow the filing procedures specified herein will render an application unacceptable for filing. Such an application will be dismissed with prejudice.

After the filing window has closed the Commission will issue a Public Notice as soon as feasible listing the applications filed for these three service areas. In the event the Commission receives more than two acceptable applications for an IVDS system license for any of the service areas, all the applications for that particular service area will be considered mutually exclusive. The Commission will use a lottery conducted in accordance with 47 CFR 1.972 to choose among mutually exclusive applications. If a lottery is necessary, the Commission will announce by Public Notices (1) when a lottery will be held and (2) the lottery winners (tentative selectees). Tentative selectees will then have two business days from the date of the Public Notice announcing the winners to file an FCC Form 574 (plus required showings) amending their original application. The burden will be on the tentative selectees to provide all necessary information. If for some reason one or both of the tentative selectees' applications in a service area are dismissed, the Commission will open another filing window for that service area.

While the Commission intends to open all 734 service areas as quickly as possible, it will not issue system licenses until the first IVDS transmitter has been type accepted for operation in

this service. Moreover, it is important to remember that an applicant that has been awarded an IVDS system license must meet certain construction benchmarks or automatically lose the license. Further an IVDS system licensee is prohibited from transferring the license until the 5-year construction benchmark has been met.

For further information contact Consumer Assistance Branch, 717-337-1212.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 92-18584 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-011381.

Title: United Yacht Transport Joint Service Agreement.

Parties: Dock-Express Shipping B.V.

Wijsumuller Transport Holding B.V.

Synopsis: The proposed Agreement will permit the parties to establish a joint service in the trade between all ports in the United States, including Puerto Rico and the U.S. Virgin Islands, and worldwide ports.

By Order of the Federal Maritime Commission.

Dated: July 29, 1992.

Joseph C. Polking,
Secretary.

[FR Doc. 92-18336 Filed 8-3-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Memorandum to Administrative Law Judges of the Departmental Appeals Board; Delegation of Authority To Conduct Hearings and Render Decisions on Civil Monetary Penalty Cases Brought Under Section 1140 of the Social Security Act

I hereby delegate to any and all administrative law judges in, assigned to, or detailed to, the Departmental Appeals Board, my authority to conduct hearings and to render decisions with respect to the imposition of civil monetary penalties under section 1140 of the Social Security Act, 42 U.S.C. 1320b-10.

This delegation includes, but is not limited to, the authority to administer oaths and affirmations, to subpoena witnesses and documents, to examine witnesses, to exclude or receive and give appropriate weight to materials and testimony offered as evidence, to make findings of fact and conclusions of law, and to determine whether civil monetary penalties should be imposed. The determinations by the administrative law judge are final unless reviewed by a member or members of the Departmental Appeals Board.

This delegation is effective upon date of signature.

Dated: July 24, 1992.

Louis W. Sullivan,
Secretary.

[FR Doc. 92-18366 Filed 8-3-92; 8:45 am]

BILLING CODE 4110-60-M

Memorandum to Chair and Members of the Departmental Appeals Board; Delegation of Authority To Conduct Hearings and Render Decisions on Civil Monetary Penalty Cases Brought Under Section 1140 of the Social Security Act

I hereby delegate to the Chair and Members of the Departmental Appeals Board my authority to make final determinations with respect to the imposition of civil monetary penalties on review of, or by declining to review, initial decisions of administrative law judges relating to section 1140 of the Social Security Act, 42 U.S.C. 1320b-10. This delegation is effective upon date of signature.

Dated: July 24, 1992.

Louis W. Sullivan,
Secretary.

[FR Doc. 92-18367 Filed 8-3-92; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 92D-0276]

Formatting, Assembling, and Submitting New Animal Drug Applications; Draft Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of a draft document entitled "Guideline for Formatting, Assembling, and Submitting New Animal Drug Applications," prepared by the Center for Veterinary Medicine (CVM). This draft guideline discusses the submission of new animal drug applications (NADA's) under the revised format included in FDA's proposed rule to revise the agency's NADA regulations.

DATES: Written comments by October 5, 1992.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Communications and Education Branch (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8755. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8623.

SUPPLEMENTARY INFORMATION: CVM is providing an opportunity for comment on a draft guideline entitled "Guideline for Formatting, Assembling, and Submitting New Animal Drug Applications." The draft guideline has been developed for use by sponsors of NADA's. It is intended to improve the quality of applications filed for approval of new animal drugs, and consequently, facilitate a more efficient review of the applications by the agency. The draft guideline tracks the format included in

FDA's proposed rule to revise its regulations governing the approval, disapproval, and withdrawal of approval for marketing of new animal drugs (56 FR 65544, December 17, 1991). Persons planning to submit an NADA, however, should be aware that neither this guideline nor the proposal will become effective unless and until the final rule has been published in the **Federal Register**.

For reasons of style, this draft guideline is written as if the proposed rule had been promulgated. FDA emphasizes, however, that this draft guideline does not indicate in any way that the proposed rule or a new rule governing the submission and review of NADA's will be promulgated. This draft guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits on or for any private person. Where the guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline. If in any way the guideline is inconsistent with the proposed rule or the preamble to the proposed rule, the text of the proposed rule or the preamble to it would govern.

Interested persons may submit written comments on the draft guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18391 Filed 8-3-92; 8:45 am]

BILLING CODE 4160-01-F

Public Health Service

Indian Health Service; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HG (Indian Health Service) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (52 FR 47053-67, December 11, 1987, as amended most recently at 57 FR 4051, February 3, 1992), is further amended to reflect the following changes in the

organization and functions of the Indian Health Service (IHS). These changes in the IHS headquarters' offices will: (1) Establish an Office of Human Resources and (2) transfer the functions and staff from the Division of Personnel Management, Office of Administration and Management and the Division of Health Professions Recruitment and Training, Office of Health Programs to the Office of Human Resources within the Office of the Director, IHS.

The Office of Human Resources will recruit, develop and maintain a competent work force appropriately assigned to carry out the IHS mission. The changes will relocate major human resource components within a single organization that reports to the Director, IHS. The Office will provide leadership and accountability of agency personnel requirements, recruitment, management, and training and development objectives and activities to support the Agency's mission.

Under section HG.10. Organization, after the *Office of Information Resources Management (HGA8)*, insert the *Office of Human Resources (HGAB)*.

Under Section HG. 20. Functions, amend the statement for the Indian Health Service (HG) as follows:

(1) After the statement for the *Division of Systems Management (HGA86)* add:

Office of Human Resources (HGAB)

The Office: (1) Advises the Director, IHS, on human resource goals, objectives, policies, and priorities of the agency and the human resources profession;

(2) Provides leadership, direction, and oversight of agency-wide human resource activities that support the IHS organization and programs;

(3) Develops and maintains strategic and operational human resource plans to ensure a current and future work force for management, program delivery, and administrative support systems;

(4) Further the agency's Indian Preference policy goals by ensuring qualified Indian candidates for positions in the IHS, including placement of Indian professionals supported by agency training programs;

(5) Develops, promulgates, and administers agency human resource policies, guidelines, and instructions in accordance with Office of Personnel Management, Department of Health and Human Services, and Public Health Service policies;

(6) Ensures consistency in recruitment, training, and development applications, approaches, and outcomes by administering an agency-wide human resource system of functional

responsibility, authority, and accountability;

(7) Issues standards to monitor and evaluate all IHS training and development activities and ensures that expenditures for recruitment, training, and development support the agency's mission and goals;

(8) Provides agency-wide policy guidance, consultation, and technical assistance on all IHS human resources activities;

(9) Manages agency work force information and conducts analyses, including trends analysis and forecasting necessary for agency human resource planning, management, and evaluation;

(10) Administers an agency-wide information clearinghouse on human resources recruitment, training, and development that serves all IHS organizations and tribal health programs;

(11) Directs the agency-wide scholarship, loan repayment, professional recruitment and retention, training, and development systems;

(12) Directs personnel management operations and services for Headquarters organizational units;

(13) Ensures a safe, healthy, and productive work environment for IHS personnel to carry out their assigned duties and responsibilities, and that human resource factors are part of the agency's decision making processes;

(14) Establishes and maintains liaison and coordination with a variety of public and private organizations to provide the IHS with up-to-date human resource management, training, and development technologies;

(15) Ensures that organization and program changes involve assessments of appropriate human resource requirements, including work design, knowledge, skills, abilities, and work load;

(16) Prepares reports and studies reflecting IHS human resource activities in response to the Congress, other Federal agencies, and tribal governments.

(2) Under the heading *Office of Administration and Management (HGA2)*, delete the statement and insert the following:

Office of Administration and Management (HGA2)

(1) Provides advice and support to the Director in management and policy formulation and execution;

(2) Provides IHS-wide administrative leadership, direction, and coordination of all phases of management;

(3) Directs IHS activities in the areas of administration and management policy including: Internal control reviews, records management, third party reimbursement, delegations of authority, procurement, personal property accountability and management, and administrative services;

(4) Directs the contract and grants management activities;

(5) Directs the resource management activities including the allocation and fiscal control of resources;

(6) Directs budget formulation activities and execution; and

(7) Manages the fiscal management activities.

(3) Under the heading *Office of Health Programs (HGA5)*, delete the statement and insert the following:

Office of Health Programs (HGA5)

(1) Advises the Director, IHS, on policy formulation on the operation and management of health programs;

(2) Provides Service-wide leadership in health programs in relation to IHS goals, objectives, policies, and priorities;

(3) Provides consultation and technical assistance to all operating and management levels of the IHS and Indian tribes in the design and implementation of health management and health delivery systems;

(4) Provides guidance and support to all field activities related to the day-to-day delivery of health care;

(5) Develops and implements contract health and Medicare and Medicaid functions into the comprehensive health program through setting medical priorities, quality care oversight, operations planning, and health program evaluations;

(6) Provides leadership and direction for quality assurance activities; and

(7) Represents IHS health programs to agencies outside IHS, including international health agencies.

Under Section HG. 30. Delegation of Authority, delete the statement and insert the following:

All delegations and redelegations of authority to the Associate Directors of the Offices of Administration and Management and Health Programs pertaining to the Divisions of Personnel Management and Health Professions Recruitment and Training, respectively are now vested in the new position of the Associate Director of the Office of Human Resources insofar as the delegations relate to functions assigned by this reorganization.

All other delegations and redelegations of authority which were in effect immediately prior to this reorganization and which are consistent

with this reorganization shall continue in effect pending further redelegation.

Dated: July 24, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-16365 Filed 8-3-92; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-030-92-4350-08]

The Availability of the Uncompahgre Basin Resource Management Plan Amendment Environmental Assessment and Draft Finding of No Significant Impact (FONSI)

AGENCY: Bureau of Land Management, Interior.

ACTION: Pursuant to the National Environmental Policy Act of 1969 (40 CFR 1550.2) and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM), Montrose District, has prepared the Uncompahgre Basin Resource Management Plan Amendment Environmental Assessment. This document is now available to the public for a thirty (30) day protest period.

SUMMARY: An environmental assessment and draft FONSI for an amendment to the Uncompahgre Basin Resource Management Plan has been prepared and is now available to the public. This amendment will change the current land use plan and other related documents for managing BLM administered lands for the next 10 to 12 years. Located in west-central Colorado, the Uncompahgre Basin planning area (UBRA) encompasses 483,077 acres of federal surface estate and a total of 755,923 acres of federal subsurface mineral estate within Montrose and Delta Counties. Persons or organizations, who participated in this process and believe that approval of the amendment would be in error, may protest. Protests must be in writing and should be sent by certified mail, return receipt requested, to the Director (760), Bureau of Land Management, 1849 "C" Street, NW., Washington, DC 20240. At a minimum, the protest must contain the following:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts of the Uncompahgre Basin Resource Management Plan Amendment

Environmental Assessment being protested. To the extent possible, this should be done in reference to specific pages, paragraphs, sections, tables, maps, etc., included in the document.

4. A copy of all documents addressing the issues that you submitted during the process or a reference to the date the issue or issues were discussed by you for the record. Only those persons or organizations who participated in this planning process leading to the amendment may protest.

5. A concise statement explaining why the Director's proposed decision to approve the plan amendment is believed to be incorrect. As much as possible, reference or cite the planning documents, environmental analysis documents, and/or available planning records (e.g., meeting minutes, correspondence, etc.). A protest that only expresses disagreement with the Director's proposed decision without any supporting data will not be considered.

DATE: Protests must be received in writing by September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Copies of the Environmental Assessment are available, upon request by writing, from Uncompahgre Basin Resource Area, Bureau of Land Management, 2505 South Townsend Avenue, Montrose, Colorado 81401 or by calling James Sazama, Supervisory Range conservationist, at (303) 249-6047.

SUPPLEMENTARY INFORMATION: Highlights of the Uncompahgre Basin Resource Plan Amendment Environmental Assessment are as follows:

1. All public land in the planning unit (483,077 acres) would be designated as suitable for having fire used as a management tool.
2. Prior to a prescribed burn being completed, a site specific environmental analysis would be completed and approved along with a Burn Plan.
3. Public input and involvement would be solicited on all burns as part of the environmental analysis.
4. A burning permit would also be obtained from the State of Colorado for each prescribed burn.
5. This amendment would not eliminate or reduce any of the planning, public notification, or analysis work currently required when a planned ignition is proposed.

Dated: July 23, 1992.

Alan L. Kesterke,

District Manager, Montrose.

[FR Doc. 92-16319 Filed 8-3-92; 8:45 am]

BILLING CODE 4310-JB-M

[UT-942-5101-12-J100; UTU 67829]

Record of Decision and the Issuance of a Right-of-Way Grant**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: A Record of Decision (ROD) to grant a Right-of-Way (ROW) for the Northwest Pipeline Expansion Project was approved by the Utah State Director, Bureau of Land Management (BLM), on July 27, 1992. The ROW Grant was issued concurrently to Northwest Pipeline Corporation (Northwest) of Salt Lake City, Utah.

The ROD includes the acceptance of the Northwest Pipeline Expansion Project Final Environment Impact Statement (FEIS). The FEIS was prepared by the Federal Energy Regulatory Commission (FERC) and the Notice of Availability of the FEIS was published in the *Federal Register* on April 3, 1992. The BLM participated throughout the environmental process as a cooperating Federal agency.

The approved alignment for this pipeline, as certificated by the FERC, extends from the United States-Canadian border at Sumas, Washington, south and east through Washington, Oregon, Idaho, Utah, Wyoming, and Colorado. The proposed pipeline facilities will consist of a total of 378 miles of new pipeline or looped pipeline on Northwest's existing mainline and lateral systems. Private, County, State, Federal and Indian Trust lands are involved. The ROD covers the Federal lands administered by the BLM, Corps of Engineers (COE), Department of the Army (DOA), and Bureau of Reclamation (BR). The U.S. Forest Service (USFS) issued a ROD for their affected lands on May 28, 1992.

The ROW Grant is for the purpose of constructing, operating, maintaining and eventually terminating one 6-inch, one 16-inch, one 20-inch, several 24-inch, and one 30-inch natural gas transmission lines (pipelines) and related facilities, under the implementing regulations contained in 43 CFR part 2880. The committed mitigation measures and related monitoring and enforcement activities, developed through the environmental process, are described in the Grant. The Grant provides means to avoid or reduce environmental harm. The term of the ROW Grant will be for thirty (30) years; and it may be renewed, if appropriate. The Grant will include lands administered by the BLM, USFS, BR, DOA, and COE. The majority of the

pipelines are adjacent to existing Northwest pipelines within established pipeline corridors.

On Federal land, the pipeline will be composed of combinations of single pipelines, looping of existing pipeline, a new compressor station, modification of two compressor stations, and a communication site. Approximately 502 acres of Federal land will be involved. The width of this ROW is fifty (50) feet for a single line and seventy (70) feet for looped lines. An additional temporary workspace of twenty-five (25) feet (forty-five [45] feet in Wyoming, where topsoil for the entire disturbed area will be stockpiled) is provided for at the time of construction. Additional temporary workspace, totaling 1.437 acres, for a demobilization area and six staging areas is also allowed.

The pipelines and facilities on Federal land administered by the BLM consist of 56.6 miles of new and/or looped pipeline on Northwest's existing mainline and lateral systems. Mainline expansion will include construction of 9.2 miles of new 24-inch pipeline and 14.2 miles of new looped 24-inch pipeline, one new compressor station, one modified compressor station, and one new communication site on Federal land. On Northwest's Klamath Falls (Oregon) Lateral, 3.6 miles of 6-inch replacement of an existing 4-inch pipeline is proposed on Federal land. On Northwest's Reno (Idaho) Lateral, 29.6 miles of new loop 16-inch pipeline and a modification of one compressor station are proposed on Federal land. In addition Northwest will construct on Federal land: A 30-inch looped pipeline on 4.5 miles on Fort Lewis, Washington, and 0.8 mile on Camp Bonneville, Washington, Military Reservations (DOA); 0.2 miles of looped 20-inch pipeline on USFS land in the Columbia River Gorge National Scenic Area; 0.5 miles of looped 24-inch pipeline on BR land; and 0.4 miles of looped 24-inch pipeline on the COE's John Day Project. Northwest will initiate construction of the pipeline and related facilities immediately.

FOR FURTHER INFORMATION CONTACT:

J. Darwin Snell, Project Manager, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145-0155, (801) 539-5102.

James M. Parker,
State Director.

[FR Doc. 92-18321 Filed 8-3-92; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-02-4212-13; N-55815]

Realty Actions: Sales, Leases, etc.: Nevada**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action, N-55815.

SUMMARY: The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 44 N., R. 60 E.,

Sec. 11, S $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;Sec. 12, S $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;Sec. 13, S $\frac{1}{2}$, NW $\frac{1}{4}$;Sec. 14, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;

Sec. 19, Lot 4;

Sec. 20, NE $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 21, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,SW $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 22, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 23, All;

Sec. 24, All;

Sec. 25, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$;Sec. 26, N $\frac{1}{2}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 27, N $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$,NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 28, N $\frac{1}{2}$ NE $\frac{1}{4}$;Sec. 34, NE $\frac{1}{4}$ NE $\frac{1}{4}$;Sec. 35, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$;Sec. 36, NW $\frac{1}{4}$ NW $\frac{1}{4}$;

T. 44 N., R. 61 E.,

Sec. 7, Lots 2, 3, 4, 6, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;Sec. 18, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$;Sec. 18, Lot 5, N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$,N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$;Sec. 21, NW $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 31, Lot 2, SE $\frac{1}{4}$ NW $\frac{1}{4}$;

T. 45 N., R. 61 E.,

Sec. 13, E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$;Sec. 14, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 15, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$,N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 16, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;Sec. 23, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$;Sec. 24, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$;Sec. 25, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

T. 45 N., R. 62 E.,

Sec. 18, W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$;Sec. 30, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described above aggregate

6872.945 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), subject to valid existing rights, publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and from any subsequent land exchange proposals filed by any proponent other than Dan and Sharon Niedringhaus or their nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands, or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever occurs first.

Further information concerning the exchange is available for review at the Bureau of Land Management, Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

For a period of 45 days from the date of first publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, at the above address. All objections will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action shall become the final determination of the Department of the Interior.

Dated: July 21, 1992.

Rodney Harris,
District Manager.

[FR Doc. 92-18318 Filed 8-3-92 8:45 am]
BILLING CODE 4310-DQ-M

[NV-930-02-4212-13; N-55970]

Realty Actions; Sales, Leases, etc.: Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, N-55970.

SUMMARY: The following described public lands administered by the Bureau of Land Management are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian

T. 30 N., R. 59 E.,
Sec. 11, E½, E½W½, W½SW¼;
Sec. 12, W½W½;
Sec. 13, N¼, N¼S¼, SW¼SW¼;
Sec. 14, All;
Sec. 15, E½, E½W½;
Sec. 23, N½N½, SE¼NE¼;
Sec. 24, W½NW¼, NW¼SW¼.

T. 30 N., R. 60 E.,
Sec. 8, W½W½;
Sec. 18, E½SE¼, SW¼SE¼;
Sec. 19, NE¼, N¼SE¼.
The areas described above aggregate 3080 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), subject to valid existing rights, publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and from any subsequent land exchange proposals filed by any proponent other than Ken Jones or his nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands, or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

Further information concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

For a period of 45 days from the date of first publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, at the above address. All objections will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action shall become the final determination of the Department of the Interior.

Dated: July 21, 1992.

Rodney Harris,
District Manager.

[FR Doc. 92-18320 Filed 8-3-92; 8:45 am]
BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT-769414

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export one pair of captive-born white-handed gibbons (*Hylobates lar*) to Seoul Grand Park Zoo, Korea, for purposes of

captive breeding to enhance the propagation of the species.

PRT-769418

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export one pair of captive-born siamangs (*Hylobates syndactylus*) to Seoul Grand Park Zoo, Korea, for purposes of captive breeding to enhance the propagation of the species.

PRT-770031

Applicant: The University of Wisconsin, Madison, WI 53706.

The applicant requests a permit to import from the Australian Museum, Sydney, Australia, liver and skeletal muscle tissues of Bulmer's fruit bat (*Aproteles bulmerae*) for scientific research.

PRT-769304

Applicant: J. A. Halstead, Clovis, CA.

The applicant requests a permit to live-trap and release Tipton kangaroo rats (*Dipodomys nitratoideus nitratoideus*) in Tulare County, California, to determine the presence and abundance of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: July 30, 1992.

Margaret Tieger,
Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-18424 Filed 8-3-92; 8:45 am]
BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-529 (Final)]

Magnesium From Norway

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On July 15, 1992, the U.S. Department of Commerce made a negative final determination of sales at less than fair value on pure magnesium from Norway. Commerce also rescinded its investigation of alloy magnesium from Norway. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the Commission's antidumping investigation concerning magnesium from Norway (investigation No. 731-TA-529 (Final)) is terminated.

EFFECTIVE DATE: July 15, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

AUTHORITY: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: July 24, 1992.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92-18329 Filed 8-3-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Kathleen King, (202) 927-5493. Comments regarding this information collection should be addressed to Kathleen King, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to Ed Clark, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the Form.

Type of Clearance: Extension of the expiration date of a currently

approved collection without any change in the substance or in the method of collection.

Bureau/Office—Office of Compliance and Consumer Assistance.

Title of Form—Owner-operator Annual Report Form.

OMB Form Number—3120-0061.

Agency Form Number—OCCA-143.

Frequency—Annually.

Respondents—Motor carriers of food products and certain agricultural supplies.

No. of Respondents—1045.

Total Burden Hours: 52.25 (estimated 3 minutes per response).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18432 Filed 8-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32117]

Canadian National Railway Co.; Continuance in Control Exemption; St. Clair Tunnel Co.

Canadian National Railway Company (CN), has filed a verified notice of exemption for continuance in control of St. Clair Tunnel Company (SCTC), upon SCTC's becoming a carrier.¹

SCTC, a noncarrier, has concurrently filed notices of exemption in Finance Docket No. 32115, *Grand Trunk Western Railroad Company—Trackage Rights Exemption—St. Clair Tunnel Company* and Finance Docket No. 32116, *St. Clair Tunnel Company—Acquisition Exemption—Grand Trunk Western Railroad Company*, seeking to acquire a 16.4 mile of railroad from Grand Trunk Western Railroad Company (GTW) and to grant trackage rights back to GTW over the line being acquired.

The transaction is filed under 49 CFR 1180.2(d)(3). CN indicates that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Charles

¹ CN owns Grand Trunk Corporation, a noncarrier, which in turn owns Grand Trunk Western Railroad Company, a rail carrier. SCTC is wholly owned by CN.

A. Spitulnik, Hopkins & Sutter, 888 16th Street, NW., Suite 700, Washington, DC 20006.

Decided: July 28, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18431 Filed 8-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32115]

Grand Trunk Western Railroad Co.; Trackage Rights Exemption; St. Clair Tunnel Co.

St. Clair Tunnel Company (SCTC) has agreed to grant trackage rights to Grand Trunk Western Railroad Company (GTW),¹ between milepost 39.2 at Pound Road, northeast of Richmond, MI and milepost 55.6 near Port Huron, MI, a distance of approximately 16.4 miles. The trackage rights were to become effective on July 24, 1992.

This grant of trackage rights is one of a series of transactions² that will facilitate the construction of a new tunnel to replace the existing railroad tunnel which crosses the St. Clair River, between Sarnia, Ontario and Port Huron, MI.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles A. Spitulnik, Hopkins & Sutter, 888 16th Street, NW., Suite 700, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C. 2d 799 (1990), *aff'd sub nom. Railway*

¹ GTW is wholly owned by Grand Trunk Corporation which in turn is owned by the Canadian National Railway Company (CN). SCTC is a wholly owned subsidiary of CN.

² Verified notices have been filed in Finance Docket No. 32116, *St. Clair Tunnel Company—Acquisition Exemption—Grand Trunk Western Railroad Company* to exempt SCTC's acquisition of a line of rail from GTW, and in Finance Docket No. 32117, *Canadian National Railway Company—Continuance in Control—St. Clair Tunnel Company*, to allow the control by CN of SCTC upon the latter becoming a rail carrier.

Labor Executives' Assn. v. ICC, 930 F.2d 511 (6th Cir. 1991).

Decided: July 29, 1992.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92-18434 Filed 8-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32116]

**St. Clair Tunnel Co.; Acquisition
Exemption; Grand Trunk Western
Railroad Co.**

St. Clair Tunnel Company (SCTC), a non-carrier, files a notice of exemption to acquire a 16.4 miles of rail line from Grand Trunk Western Railroad Company (GTW) between milepost 39.2 located at Pound Road, northeast of Richmond, MI and milepost 55.6, near Port Huron, MI.¹

This transaction is the first in a series of transactions involving the relocation of the existing railroad tunnel across the St. Clair River, between Sarnia, Ontario and Port Huron, MI. Canadian law requires that SCTC be a rail carrier in order to acquire the existing tunnel. Verified notices of exemption seeking trackage rights and continuance in control have been filed in Finance Docket No. 32115, *Grand Trunk Western Railroad Company—Trackage Rights Exemption—St. Clair Tunnel Company* and Finance Docket No. 32117, *Canadian National Railway Company—Continuance in Control Exemption—St. Clair Tunnel Company*. The transaction was to have been consummated on or after July 24, 1992.²

Any comments must be filed with the Commission and served on: Charles A. Spitulnik, Hopkins & Sutter, 888 16th Street, NW., Suite 700, Washington, DC 20006.

SCTC shall retain its interest in and take no steps to alter the historic

integrity of all sites and structures on the line 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 29, 1992.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92-18435 Filed 8-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-301 (Sub-No. 8X)]

**Southrail Corp.; Discontinuance of
Trackage Rights Exemption; Mobile
County, AL**

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to discontinue its overhead trackage rights on approximately 4.7 miles of rail line belonging to Illinois Central Railroad Company (Illinois Central), from approximately milepost 4.7 (near Whistler Station, AL) to approximately milepost 0.0 (near Mobile, AL). Illinois Central will continue its operations on the subject line.

Applicant has certified that: (1) It has handled no local traffic on the line for at least 2 years (applicant has never provided local service on the line because it only has overhead trackage rights); (2) there is no overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 3, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues¹ and formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by August 14, 1992. Petitions to reopen must be filed by August 24, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Laurence R. Lafourette, Preston Gates Ellis & Rouvelas Meeds, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006-4759.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: July 22, 1992.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18433 Filed 9-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32121]

**The City of West Memphis, AR;
Acquisition and Operation Exemption;
Missouri Pacific Railroad Co.**

The City of West Memphis, Arkansas, has filed a notice of exemption to acquire and operate approximately 2.25-miles (11,853 feet) of the Missouri Pacific Railroad Company rail line between mileposts 353.281 and 355.539 in West Memphis, Crittenden County, Arkansas.¹ The proposed transaction was scheduled to be consummated on or after the effective date, July 27, 1992.

Any comments must be filed with the Commission and served on: David C.

¹ Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Because trackage rights discontinuances are exempt from the Commission's environmental and historic reporting requirements, a stay would not be issued here for these reasons.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

³ Following consummation, the City will contract operations out to a third party rail carrier; it will reserve the right to resume operations in the future.

¹ SCTC is a wholly owned subsidiary of Canadian National Railway Company (CN). GTW is wholly owned by Grand Trunk Corporation which in turn is owned by CN.

² The Railway Labor Executives' Association (RLEA) filed a routine request mistakenly identifying SCTC's notice as a request for exemption from 49 U.S.C. 11343-11347 and seeking the imposition of employee protective conditions under section 11347. However, section 10901, not 11343, governs this transaction. The Commission has determined that labor protective conditions will not be imposed on this class of transactions unless exceptional circumstances are shown. Ex Parte No. 392 (Sub-No. 1), *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 814 (1986), *aff'd sub nom. Illinois Commerce Commission v. I.C.C.*, 817 F.2d 145 (D.C. Cir. 1987). RLEA does not allege that exceptional circumstances are involved. Accordingly, labor protective conditions will not be imposed.

Peoples, West Memphis City Attorney,
P.O. Box 1728, West Memphis, AR 72303.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 28, 1992.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92-18430 Filed 8-3-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

- (1) The title of the form/collection;
- (2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
- (3) How often the form must be filled out or the information is collected;
- (4) Who will be asked or required to respond, as well as a brief abstract;
- (5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
- (6) An estimate of the total public burden (in hours) associated with the collection; and
- (7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden

estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Waiver of Grounds of Excludability

(2) I-690. Immigration and Naturalization Service

(3) One-time.

(4) Individuals or households. I-690 information is used in considering eligibility for legalization under sections 210 and 245A of the I & N Act, during the processing of both the application for temporary resident status and the application for permanent resident status.

(5) 52,000 annual responses at .25 hour per response

(6) 13,000 annual burden hours

(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: July 29, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-18352 Filed 8-3-92; 8:45 am]

BILLING CODE 4410-10-M

Drug Enforcement Administration

Ray Lewis Frie, D.V.M.; Revocation of Registration

On Marcy 4, 1992, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), Office of Diversion Control, issued to Ray Lewis Frie, D.V.M., Route 7, Box 136, Jonesboro, Arkansas 72401, an Order to Show Cause proposing to revoke Dr. Frie's DEA Certificate of Registration, AF3070618, and to deny any pending applications for renewal of such registration. The Order to Show Cause was received by Dr. Frie on March 10, 1992.

More than thirty days have elapsed since the Order to Show Cause was received by Dr. Frie and the Drug Enforcement Administration has received no response thereto. Therefore, pursuant to the provisions of 21 CFR 1301.54(a) and 1301.54(d), Dr. Frie is deemed to have waived his opportunity for a hearing on any matters of law and fact involved herein. Accordingly, the

Administrator now issues his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that the Arkansas Veterinary Medical Examining Board has advised the Drug Enforcement Administration that Dr. Frie is not authorized to prescribe, administer, dispense or possess controlled substances in the course of his professional practice. The Administrator further finds that the Board has requested that DEA neither issue Dr. Frie a registration nor renew his existing registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration if he finds that the registrant is no longer authorized to dispense controlled substances or that the suspension, revocation or denial of registration has been recommended by competent state authority. Additionally, 21 U.S.C. 823(f) authorizes the Administrator to deny registration to a practitioner upon consideration of the recommendation of the appropriate state licensing board. Accordingly, there are lawful bases for the revocation of Dr. Frie's registration and for the denial of any pending applications for renewal thereof.

This agency has consistently held that the lack of state authorization requires the revocation of the registrant's DEA Certificate of Registration. See *Lawrence R. Alexander, M.D.*, Docket No. 92-22, 57 FR 22256 (1992); *Bobby Watts, M.D.*, Docket No. 87-71, 53 FR 11919 (1988); *Wingfield Drugs, Inc.*, Docket No. 87-13, 52 FR 27070 (1987), and cases cited therein. There having been no evidence submitted on behalf of the registrant, the Administrator concludes that Dr. Frie's registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AF3070618, previously issued to Ray Lewis Frie, D.V.M., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective August 4, 1992.

Dated: July 28, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-18340 Filed 8-3-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR**Employment and Training
Administration****Determinations Regarding Eligibility
To Apply for Worker Adjustment
Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,300; *Acme Electric Corp., Salt Lake City, UT*

TA-W-27,331; *Applied Machining Technology, Inc., (Formerly MHP Machines, Inc), Orchard Park, NY*

TA-W-27,217; *H.S. Automotive Longview Ave., Mansfield, OH*

TA-W-27,225; *H.R. Automotive, Rupp Road, Mansfield, OH*

TA-W-27,261; *Selas Corp., of America, Dresher, PA*

TA-W-27,252; *Kooshies Diapers International, Inc., Wills Point, TX*

TA-W-27,256; *Amax Specialty Copper Corp., Carteret, NJ*

TA-W-27,232; *Sea Farm Washington, Rochester, WA*

TA-W-27,112; *Crucible Specialty Metals Corp., Syracuse, NY*

TA-W-27,111; *General Electric Co., GE Appliance Control, Carroll, IA*

TA-W-27,251; *DAW Forest Products, Bend, OR*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,458; *Restech, Houston, TX*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA-W-27,118; *Bethlehem Steel Corp., Bar, Rod & Wire Div., Johnston, PA*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA-W-27,429; *Wolf Energy Co., Denver, CO*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,167; *AT&T Marketing Delivery Center, New Orleans, LA*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,370; *Colrick Trucking Co., Inc., Hillside, NJ*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,269; *Saco Defense, Inc., Saco, ME*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,326; *Southwestern Bell Telephone Co., Odessa, TX*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,273; *John E. Chance & Associates, Inc., Lafayette, LA*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-27,305; *Oxford of Tifton, Tifton, GA*

A certification was issued covering all workers separated on or after May 18, 1991.

TA-W-27,180; *Volunteer Leather Co., Whitehall, MI*

A certification was issued covering all workers separated on or after March 14, 1991.

TA-W-27,302; *General Motors Corp., Inland Fisher Guide Div., Grand Rapids, MI*

A certification was issued covering all workers separated on or after May 1, 1991.

TA-W-27,268; *Wilner Wood Product, Norway, ME*

A certification was issued covering all workers separated on or after April 30, 1991.

TA-W-27,404; *General Semiconductors Industries, Inc., Tempe, AZ*

A certification was issued covering all workers separated on or after June 10, 1991.

TA-W-27,198; *Sahlman Seafoods, Inc., Lakeland, FL*

A certification was issued covering all workers separated on or after April 3, 1991.

TA-W-26,943; *Moline Sewing Corp. of Pennsylvania, Philadelphia, PA*

A certification was issued covering all workers separated on or after February 11, 1991.

TA-W-27,290; *Enserch Exploration, Inc., Dallas, TX*

A certification was issued covering all workers separated on or after May 12, 1991.

TA-W-27,291; *Enserch Exploration, Inc., Midland, TX*

A certification was issued covering all workers separated on or after May 15, 1991.

TA-W-27,144; *Anro of Sarasota, Inc., Sarasota, FL*

A certification was issued covering all workers separated on or after April 1, 1991.

TA-W-27,360, TA-W-27,361 & TA-W-27,262; *The Anschutz Corp., Houston TX, Midland, TX and Oklahoma City, OK*

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,115; *Eastman Christensen, Lafayette, LA*

A certification was issued covering all workers separated on or after April 3, 1991.

TA-W-27,284; *A & A Manufacturing, Inc., Franklin Spring, GA*

A certification was issued covering all workers separated on or after May 5, 1991.

TA-W-27,203; *Crater Lake Lumber Co., Chiloquin, OR*

A certification was issued covering all workers separated on or after April 8, 1991.

TA-W-27,230; Legris, Inc., Rochester, NY

A certification was issued covering all workers separated on or after February 1, 1992.

TA-W-27,210; Heidelberg Harris, Inc., Dover, NH

A certification was issued covering all production workers separated on or after April 15, 1991.

A certification was issued covering all salaried workers separated on or after May 25, 1992.

TA-W-27,211 & TA-W-27,212;

Heidelberg Harris, Inc., Nashville, TN and Fort Worth, TX

A certification was issued covering all workers separated on or after April 15, 1991.

TA-W-27,342; Elf Exploration, Inc., Houston, TX

A certification was issued covering all workers separated on or after April 20, 1991.

TA-W-27,336; R & S Tong Service, Odessa, TX

A certification was issued covering all workers separated on or after May 20, 1991.

TA-W-27,295, TA-W-27,314, TA-W-27,315; Fuel Resources Development Corp. (Fulco), Denver, CO, Meeker, CO and Durango, CO

A certification was issued covering all workers separated on or after May 26, 1991.

TA-W-27,216; Chevron Exploration and Production Services Co., Party 5, Houston, TX and at Various Other Locations in the Following States: TA-W-27,216A; AL, B; CA, C; CO, D; LA, E; MS, F; MO, G; MT, H; NM, I; OR, J; TX, K; WY

A certification was issued covering all workers separated on or after February 24, 1991.

TA-W-27,329, TA-W-27,329A; Reading & Bates Drilling Co. Headquartered in Houston, TX and at Various Offshore Locations in the Gulf of Mexico

A certification was issued covering all workers separated on or after May 15, 1991.

TA-W-27,344; Chevron Exploration & Production Services Co., Exploration & Production Dept., Houston, TX

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,345; Chevron Exploration & Production Services Co., Technical Services Dept., Houston, TX

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,346 & TA-W-27,346A;

Chevron Exploration & Production Services Co., Eastern Support Div., New Orleans, LA & Operating in the State of LA

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,347 & TA-W-27,347A;

Chevron Exploration & Production Services Co., Western Support Div., San Ramon, CA & Operating in the State of CA

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,303; Automatic Injection Molding Co., Inc., Berkeley Heights, NJ

A certification was issued covering all workers separated on or after May 15, 1991 and before March 31, 1992.

TA-W-27,267; Chevron USA Production Co., Midland, TX & Operating in Other Locations in A; West Texas and B; New Mexico

A certification was issued covering all workers separated on or after May 5, 1991.

TA-W-27,308; Chevron USA Production Co., Western Production, Bakersfield, CA & Operating in Other Locations in A; CA

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,310; Chevron USA Production Co., Central Production, Houston, TX & Operating in Other Locations in A; TX, B; OK, C; ND, D; MS, E; AL, F; KS, G; AR, H; LA

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,311; Chevron USA Production Co., Gulf of Mexico, New Orleans, LA & Operating at Other Locations in A; LA and B; TX

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,312; Chevron USA Production Co., Rocky Mtn. Production, Englewood, CO & Operating at Other Locations in A; CO, B; UT, C; WY, D; ND

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,313; Chevron USA Production Co., Natural Gas Production, Houston, TX & Operating at Other Locations in A; TX, B; LA, C; CA

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,316; Chevron USA Production Co., Land Business Unit, Houston, TX & Operating at Other Locations in A; TX, B; CO, C; CA, D; LA, E; AK

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,317; Chevron USA Production Co., Exploration Business, Houston, TX & Operating at Other Locations in A; TX, B; CA, C; CO, D; LA, E; AK

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,318; Chevron USA Production Co., Finance Div., Concord, CA & Operating at Other Locations in A; CA

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,323; Weaver Services, Inc., Snyder, TX

A certification was issued covering all workers separated on or after May 13, 1991.

TA-W-27,247; Baron Handbag, New York, NY

A certification was issued covering all workers separated on or after May 11, 1991.

I hereby certify that the aforementioned determinations were issued during the month of July 1992. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 28, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18396 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27, 348]

Chevron Exploration and Production Services Co. Seismic Field Crew (Party 5) Houston, TX; Notice of Termination of Investigation.

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 8, 1992 in response to a worker petition which was filed on June 8, 1992 on behalf of workers at Chevron Exploration and Production Services Company, Seismic Field Crew (Party 5), Houston, Texas.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-27, 216). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of July, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18394 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-9069, et al.]

Proposed Exemptions; Spreitzer, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue NW.,

Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Truck Dispatch Service, Inc. Profit Sharing Plan and Trust (the Plan) Located in Fresno, California

[Application No. D-8984]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash purchase (the

Purchase) of a certain promissory note and trust deed (the Note) by the Plan from Truck Dispatch Service, Inc., a California corporation, the sponsoring employer of the Plan (the Employer), and a party in interest with respect to the Plan, provided the Plan pays the lesser of either (1) the sum of \$155,000, or (2) the fair market value of the Note as determined by a qualified, independent appraiser on the date of the Purchase.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 13 participants and total assets of \$949,197.29, as of December 31, 1991. One segregated individual account in the Plan with assets valued at \$869,598.56, as of December 31, 1991, constitutes approximately 91.5 percent of the total assets in the Plan. The segregated, individual account is maintained by the Plan for Mr. James Kourafas. The trustees of the plan are Messrs. James Kourafas, Tom Kourafas, and Nick Kourafas (the Trustees), who in their capacity as the Trustees have investment discretion over the entire assets of the Plan.

2. The sponsor of the Plan is the Employer which is California corporation. The Employer serves as a transportation broker for intrastate and interstate shippers of general commodities which includes mostly agricultural products and machinery. The Employer is owned by Mr. James Kourafas, who is chairman of the board of directors of the Employer. Mr. Nick Kourafas, who is a brother of James Kourafas, is the secretary of the Employer. Mr. Tom Kourafas, the son of Mr. James Kourafas, is the president of the Employer.

3. The Note, dated March 28, 1991, is a 15 year installment promissory note for the principal sum of \$241,000, with interest, at the rate of 10 percent per annum payable from April 29, 1991, on the unpaid principal. Annual payments of principal and interest are to be made on December 1 of each year beginning in 1992 in the sum of \$29,657.24. In accordance with the terms of the Note, the sum of \$29,483.02 was paid on December 1, 1991, leaving an outstanding principal balance owing in the sum of \$225,778.90 to be paid with interest in installments over the remaining 14 years (as the Note originated in March 1991, only a partial year's interest was due). The Note is secured by a recorded first deed of trust on 49.09 acres of real property (the Vineyards) located in Fresno County, California, which was conveyed by Grant Deed, dated March 28, 1991, by

the Employer to Albert Medina and Virginia Medina (the Medinas). In turn, the Medinas tendered to the Employer the sum of \$89,000 in cash and the Note for \$241,000 for the Vineyards. The applicant represents that the Medinas are unrelated to the Plan or the Employer.

The Vineyards has been appraised by an independent appraiser, Mr. Lawrence D. Hopper, MAI, SRA, Fresno, California, who determined that the Vineyards fair market value was \$356,000, as of March 17, 1992.

The Note was determined to have a fair market value of \$155,000, as of May 1, 1992, by an independent appraiser, Mr. Richard E. Huber, GRI, CREA, CPR, and Probate Referee, Madera and Mariposa Counties, California.

4. It has been proposed by the applicant that the segregated individual account maintained by the Plan for Mr. James Kourafas, will purchase the Note from the Employer for the lesser of either (a) the sum of \$155,000 or (b) the fair market value of the Note as determined by a qualified, independent appraiser on the date of the Purchase. The purchase price will not exceed 18 percent of the total assets in Mr. James Kourafas's segregated individual account.

The applicant represents that the Purchase is in the interest of the Plan and its segregated individual account. Also, the applicant represents that the Plan will diversify its assets and benefit from the long-term high yields produced by the Note; and in case of the unforeseeable default on the Note, the Plan would be amply protected by the pledged security. The applicant further represents that no expenses of any kind will be incurred by the Plan from the Purchase.

5. In summary, the applicant represents that the transaction satisfies the criteria for an exemption under section 408(a) of the Act because:

(a) The Purchase will be a one-time transaction for cash;

(b) The segregated individual account of the Plan will pay no more than the fair market value of the Note as determined by a qualified, independent appraiser on the date of the Purchase;

(c) No expenses of any kind will be incurred by the Plan from the Purchase;

(d) Less than 18 percent of the assets in the segregated individual account of Mr. James Kourafas will be affected by the transaction; and

(e) Mr. Kourafas, who is the only person whose interests will be affected by the transaction, desires that the transaction be consummated.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Since the individual account which is maintained for Mr. James Kourafas is the only account to be affected by the transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of date of publication in the *Federal Register* of this notice of proposed exemption.

For Further Information Contact

Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Spreitzer, Inc. Profit Sharing Trust (the Plan) Located in Cedar Rapids, Iowa

[Application No. D-9069]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1) (A) through (E) of the Code, shall not apply for a period of five years to loans of money from the Plan to Spreitzer, Inc. (the Employer), a party in interest with respect to the plan, and to a personal guarantee of the loans by a party in interest, provided that the following conditions are met:

1. The terms of the loans are at least as favorable as the Plan could obtain in arm's-length transactions with an unrelated party;

2. The loans in the aggregate, including loans outstanding, if any, under a previous exemption granted by the Department, do not at any time account for more than 25 percent of the assets of the Plan;

3. A fiduciary independent of the Employer will approve and monitor each loan on behalf of the Plan;

4. Each loan will have a maturity of 90 days or less;

5. The interest rate on each loan will be one percent above the rate for similar loans charged by Firststar Bank Cedar Rapids but in no event less than eight percent;

6. Each loan will be secured by a first lien on insured construction and mining equipment owned by the Employer, and such security will be maintained at no less than 200 percent of the outstanding loan balances; and

7. A shareholder of the Employer will personally guarantee each loan made by the plan to the Employer.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant. However, any loan made to the Employer pursuant to the proposed exemption may continue to its maturity date provided the loan was entered into during the five-year period.

Summary of Facts and Representations

1. The Employer is a corporation engaged in the business of selling, leasing and servicing construction and mining heavy equipment. J.E. Spreitzer (Spreitzer) is an officer and shareholder of the Employer. The Plan is a profit sharing plan which had 15 participants and total assets of approximately \$1,500,000 as of December 31, 1991.

2. The Employer obtained a previous prohibited transaction exemption (PTE 87-79, 52 FR 29906, August 12, 1987) which permitted the Plan to make a series of loans to the Employer for a period of five years. The applicant represents that all the terms and conditions of PTE 87-79 were met and that all loan payments thereunder were received by the Plan timely and in full.

3. The applicant now requests another temporary exemption for a period of five years for the Plan to make a similar series of loans to the Employer, to be used for inventory of equipment and expanding rental business. The Plan will enter into a loan agreement (the Loan Agreement) with the Employer, whereby the Plan will periodically lend to the Employer amounts of money up to an aggregate at any time of no more than 25 percent of the assets of the Plan, including loans remaining, if any, under PTE 87-79. The loan balances will be monitored monthly to assure that the total loan amount remains within the 25 percent limit. Each individual loan will have a maturity of 90 days or less, and

principal and interest on the loans will be payable at maturity.

The interest rate on each loan will be one percent above the rate charged by Firststar Bank Cedar Rapids, N.A. (the Bank) for secured prime commercial loans of 90-day maturity, but will not be less than eight percent per annum. The applicant represents that the Bank is independent of the Employer except for serving as discretionary trustee of the Plan, and that the Employer accounts for less than one percent of the business of the Bank. The Bank stated by letter dated March 6, 1992, that it has previously extended credit to the Employer at the Bank's prime rate (for similar loans) plus one percent on a secured basis.

The Bank anticipates that it would continue to extend credit to the Employer on the same terms in the future. Each loan will be personally guaranteed by Spreitzer. In this regard, the applicant represents that Spreitzer has a net worth in excess of \$1 million.

4. Each Loan made during the five-year period will be secured by a first lien on new and used construction and mining equipment (the Collateral). The Collateral is presently owned by the Employer and used to conduct the Employer's business operations. The Plan will have a perfected first security interest in the Collateral through the execution and filing by the Employer of security agreements on behalf of the Plan. The Employer will pay all costs associated with the maintenance of the Collateral, including but not limited to paying all taxes, insurance premiums, repairs and storage costs. The Employer will warrant to own throughout the terms of the loans all Collateral free from any adverse claims, security interests (other than security interests granted to the Plan) or encumbrances. The applicant represents that the Collateral is marketable and that its value is not expected to decrease appreciably over the five-year term of the Loan Agreement. The appraised market value of the Collateral will at all times during the term of the loans be not less than 200 percent of the amount of the outstanding loan balances. The fair market value of each piece of equipment comprising the Collateral will be determined by an independent appraiser to be selected by an independent fiduciary. Each appraisal will be updated annually to assure that the required value of the Collateral is maintained. If new equipment is used as collateral, its wholesale price will be deemed the appropriate value. The Collateral will be kept insured at the Employer's expense with the Plan

designated as beneficiary of the insurance policy. The release of any Collateral from the Loan Agreement, such as in the event of sale or trade-in, shall require the prior approval of the independent fiduciary.

5. An independent attorney, Robert Hatala (Hatala) of the law firm of Crawford, Sullivan, Read, Roemer & Brady, P.C. in Cedar Rapids, Iowa, has been appointed an independent fiduciary to approve, monitor and enforce the proposed loans of behalf of the Plan. Hatala represents that less than one percent of his firm's business originates from the Employer. Hatala is familiar with the duties of a fiduciary under the Act and assumes the liability related to the proposed transactions. He has reviewed the needs of the Plan and the transactions as proposed and has concluded that the proposed loans are in the best interests of the Plan. Hatala is authorized to approve or disapprove any of the loans made under the Loan Agreement. He will monitor all terms and conditions of the loans and will enforce collection on the loans in the event of a default. In the event of a default, Hatala will take whatever action is deemed appropriate, including moving on the Collateral if necessary. Hatala will monitor the value on the Collateral if necessary. Hatala will monitor the value of the Collateral so that at no time during the term of the loans will the value of the Collateral fall below 200 percent of the aggregate outstanding loan balances.

6. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because:

(1) An independent fiduciary has determined that the proposed loans are in the best interests of the Plan;

(2) The independent fiduciary will approve and monitor each loan made under the Loan Agreement;

(3) The loans in the aggregate will account for no more than 25 percent of the assets of the Plan;

(4) The loans will be secured by fully insured Collateral which will at all times have a market value of at least 200 percent of the outstanding loan balances;

(5) Spreitzer will personally guarantee all the payments due on the loans to the Plan; and

(6) All loan payments due under PTE 87-79 were received by the Plan timely and in full.

For Further Information Contact

Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Inland Container Corporation Savings and Stock Purchase Plan for Salaried Employees (the Plan) Located in Indianapolis, Indiana

[Exemption Application No. D-9036]

Proposed Exemption

The Department is considered granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 408(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed extension of credit to the Plan (the Advances) by Inland Container Corporation (Inland), a party in interest with respect to the Plan, relating to guaranteed investment contract #GA-CG0126303A (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plan's potential repayment of the Advances (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party, (b) the Advances are made only in lieu of payments due from Executive Life with respect to the GIC, (c) the Repayments shall not exceed the Advances plus interest which may accrue on such amounts determined at the Amended Rate (as described below), (d) the Repayments of the Advances, including interest thereon, if any, shall be made only from, and shall not exceed, the amounts actually received by the Plan from Executive Life or any other source making payment with respect to the GIC (the Recoveries), and (e) the Repayments are waived to the extent the Advances exceed the Recoveries.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with approximately 1,782 participants as of January 31, 1992. Inland, a wholly-owned subsidiary of Temple-Inland Inc. (the Parent Corp.), is engaged in integrated manufacturing and production operations and is headquartered in Indianapolis, Indiana. The Plan is maintained on behalf of employees of Inland and four Inland subsidiaries: Anderson Box Company in Indianapolis, Indiana, Inland-Orange Inc. in Orange, Texas, Sabine River & Northern Railroad Company in Orange, Texas, and Inland-Rome Inc. in Rome,

Georgia. As of January 31, 1992, there were total assets of approximately \$96,815,000 in the Plan. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. The trustee of the Plan is INB National Bank in Indianapolis, Indiana (the Trustee).

2. Participants may invest their Account balances in any of three different investment funds within the Plan, including Fund A, which invests in fixed income vehicles such as guaranteed investment contracts issued by insurance companies. As of January 31, 1992, Fund A held total assets of approximately \$32,035,052.44, constituting about 33.1 percent of the total assets of the Plan. Discretion over the investment of assets in Fund A is exercised by an investment committee (the Committee), comprised of officers and/or directors of the Parent Corp. Accounts invested in Fund A earn interest at a rate (the Blended Rate) which is determined by "blending" the rates earned from all investment instruments held by Fund A.

3. Among the assets in Fund A is the GIC, which the Trustee purchased on behalf of the Plan at the Committee's direction on November 24, 1987, with an effective date of January 1, 1988. The terms of the GIC established a deposit limit of \$7.3 million, a guaranteed interest rate of 9.50 percent (the Contract Rate), and a maturity date of December 31, 1992. The GIC is non-benefit-responsive, providing for payment only upon final maturity. Inland represents that as of April 30, 1991, the GIC had an accumulated book value of \$9,588,221.55, representing total deposits plus accrued interest, and constituting approximately 10.6 percent of the total assets held by the Plan.

4. On April 11, 1991, Executive Life was placed into conservatorship by the insurance commissioner of the State of California.¹ As a result, Inland represents that maturity and other payments on Executive Life contracts, such as the GIC, have been suspended, and that under the prevailing circumstances it is uncertain whether, or to what extent, Executive Life will be able to make any payments of principal or interest due the Plan under the terms of the GIC upon maturity.

In response to the adverse developments affecting the GIC, the Plan was amended, effective May 1, 1991 (the Amendment), to divide Fund A assets into two sub-accounts: one representing the portion of Fund A invested in the GIC (the E.L. Sub-account) and one representing the balance of Fund A assets (the General Sub-account). Inland represents that the allocation of Fund A between the Sub-accounts was based on the respective contract amounts of all guaranteed investment contracts held by Fund A as of April 30, 1991. Accordingly, each Plan participant whose Account was invested in Fund A on April 30, 1991, has an E.L. Sub-account and a General Sub-account based upon that participant's Fund A balance as of April 30, 1991. All contributions to Fund A on or after May 1, 1991, including any Plan assets transferred at a participant's direction from another Plan fund, have been allocated to the General Sub-accounts.

Pursuant to the Amendment, all E.L. Sub-accounts are treated as having no determinable value until a date (the Revaluation Date) defined as the earlier of (a) the date any amount becomes recoverable under the GIC, or (b) the date on which the president of Inland determines that the E.L. Sub-accounts have a determinable value. Upon the Revaluation Date, the E.L. Sub-accounts are to be revalued (the Revaluation) based on their fair market value. The Amendment had the effect of freezing the E.L. Sub-accounts and preventing all distribution, withdrawals, loans, and transfers from the participants' E.L. Sub-accounts. With respect to the balances in their General Sub-accounts, participants have been able to continue to direct transfers and to apply for distributions, withdrawals and/or loans, at the time and in the same manner as normally permitted under the Plan. Since the Amendment, the "blended" rate of interest credited to General Sub-accounts has been revised to reflect the segregation and removal of the GIC from other Fund A assets.

In order to restore to the Plan participants the ability to direct transfers, to receive distributions, and to make loans and other withdrawals, with respect to amounts held in the E.L. Sub-accounts, and with the intention of protecting the interests of participants with respect to investments in the GIC, Inland proposes the Advances. An exception is requested by Inland for the Advances, and their potential Repayments, under the terms and conditions described herein.

5. The terms and conditions of the Advances and the Repayments will be

embodied in a written agreement between Inland and the Trustee (the Agreement). Inland represents that their intention, expressed by the Agreement, is to guaranty (the Guaranty) that the Plan will recover, with respect to the GIC, an amount (the Guaranteed Amount) no less than the April 30, 1991 face value of the GIC (defined as total deposits plus accrued interest at the Contract Rate), plus interest thereon at an effective annual rate of 7 percent through the GIC's maturity date of December 31, 1992, and interest thereafter at a rate described in the Agreement as the Floating T-Bill Rate. The Agreement provides for the Guaranty and the Advances to be accomplished in the following manner:

(a) Within 30 days after the requested exemption, if granted, is published in the *Federal Register*, and a closing agreement is executed with the Internal Revenue Service, the Plan will be amended again (the Re-amendment). The Re-amendment will merge the E.L. Sub-account with the General Sub-account, thereby merging each participant's E.L. Sub-account with his or her General Sub-account. The Re-amendment will have the effect of lifting the freeze on distributions, withdrawals, loans, and fund transfers with respect to Account balances attributable to investments in the GIC. Upon the Re-amendment, the GIC will be valued at its accumulated book value as of April 30, 1991 (the Revalued GIC). However, the Revalued GIC would not continue to be credited with interest earnings at the Contract Rate. For all time periods commencing May 1, 1991, the Revalued GIC will earn a redefined rate of interest (the Amended Rate) on the amount by which the Revalued GIC exceeds total Advances under the Agreement plus total amounts recovered by the Plan (the GIC Proceeds) from Executive Life or other parties making payment on the GIC. The Amended Rate will be seven percent for the period beginning May 1, 1991 through the December 31, 1992 maturity date of the GIC, and for the period beginning January 1, 1993, the Amended Rate will be a variable rate equal to the average yield on reference five-year Treasury bonds less seventy-five basis points (.75 percent).

(b) To evidence the commitment to make the Advances up to the Guaranteed Amount, Inland will make an initial Advance (the Initial Advance) to the Plan of \$3.5 million, on or before the later of (1) December 31, 1992, or (2) five days after the Re-amendment. Inland represents that the amount of the Initial Advance is calculated to be Inland's best estimate of the loss that the

¹ The Department notes that the Committee's decision to acquire and hold the GIC is governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4, which may have arisen as a result of the acquisition and holding of the GIC.

Plan may incur with respect to the GIC, exclusive of any state guaranty recoveries, upon the final disposition of the Executive Life conservatorship.

(c) Simultaneously with the Initial Advance, Inland will enter into a credit arrangement (the Credit Facility) with the Trustee under which Inland will be obligated to make further Advances to the Plan, in addition to the Initial Advance. The Credit Facility will require Inland to make any additional Advances, up to the Guaranteed Amount, which are necessary for the Plan to honor requests for distributions, withdrawals, loans and fund transfers.

(d) A final Advance (the Final Advance) will be due the Plan within thirty days after the Plan administrator is able to determine the amount of the Plan's total recovery from Executive Life and any other sources making payment with respect to the GIC (the Recoveries), including any recoveries from state guaranty funds. Inland will make the Final Advance in an amount equal to the Revalued GIC, including interest at the Amended Rate through the date of the Final Advance, less the sum of all Recoveries and previous Advances. In the event the sum of all Recoveries plus previous Advances is greater than the Revalued GIC plus Amended Rate interest, the difference will be applied as Repayments of the Advances, up to the total amount of Advances plus interest thereon (the Repayment Interest).

The Repayments of the Advances, including Repayment Interest, cannot exceed the total Recoveries. Repayment Interest will accrue at a rate equal to the lesser of (1) the rate being credited to the Revalued GIC, or (2) the blended rate being earned on other Fund A assets. No Repayments of the Advances, including Repayment Interest, will be made until the Plan recovers the full Guaranteed Amount plus interest credited in accordance with the Agreement.

Inland represents that it proposes the provision of Repayment Interest on the Advances as a matter of "fundamental fairness" to Inland for its Guaranty of the Plan's investment in the GIC. Inland also notes that in the event the Recoveries received by the Plan exceed the Advances plus Repayment Interest thereon, the Plan will retain such additional amounts.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons:

(1) The Plan will be relieved of any further risk or uncertainty with respect to the maturity payment due from Executive Life under the GIC;

(2) The proposed transaction will enable Fund A to fully fund Account distributions, withdrawals, loans, and Account transfers to other Plan funds;

(3) The Plan will receive the full accumulated book value of the GIC as of April 30, 1991 together with interest thereafter at the Amended Rate;

(4) Repayments of the Advances, including interest thereon, will be restricted to the Recoveries and will be waived to the extent the Advances exceed the Recoveries; and

(5) No repayment of the Advances, or interest thereon, may be made until the Plan has recovered the full amount guaranteed, including interest, pursuant to the Agreement with Inland.

For Further Information Contact

Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Master Water Conditioning Corp. Money Purchase Pension Plan (the Plan) Located in Pottstown, Pennsylvania

[Application No. D-9090]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of certain vacant land (the Property) by the Plan to Master Water Conditioning Corp. (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The Plan in this transaction will receive the greater of: (1) \$60,000; or (2) the fair market value of the Property as determined at the time of sale by an independent, qualified appraiser plus \$5,000, which represents a premium due to the adjacency factor described herein;

(b) The proposed sale will be a one-time cash transaction; and

(c) The Plan will pay no costs or commissions as a result of this transaction.

Summary of Facts and Representations

1. The Plan, effective June 15, 1979, is a defined contribution money purchase plan and trust, which as of December 31, 1991, had \$1,999,019 in assets. The Plan has approximately 14 participants. The Plan's trustee is Maurice E. Kurtz, who

is the president of the Employer and who also owns approximately 60% of the common shares of the Employer. The Employer is a Pennsylvania corporation which is in the business of assembling water conditioning, softening and filtration systems.

2. On April 25, 1975, the Plan acquired certain real estate (the Original Parcel) from Clow Corp., which was an unrelated party to the Plan and the Employer. The Plan paid \$45,000 in cash for the Original Parcel. The Original Parcel consisted of 4.137 acres of land. It is represented that on July 17, 1979, approximately 2.65 acres of the Original Parcel were sold for \$50,000 in cash to A & L Handles Corporation, which is independent of all parties involved in this transaction. The Property is what remains of the Original Parcel and consists of 1.482 acres of vacant land. The Property is adjacent to the real estate which is currently used by the Employer to conduct its business, however, it is represented that the Property has never been used by any party in interest. It is also represented that annual costs associated with the upkeep of the Property, primarily taxes, were paid by the Employer. As such, the Plan incurred no holding costs with respect to the Property.

3. The Employer is currently contemplating expanding its operations and desires to use the Property for this purpose. The Employer proposes to purchase the Property from the Plan in a one-time cash transaction. The Plan will pay no costs or commissions in connection with the sale. An appraisal of the Property was prepared on April 9, 1992, by Clyde M. Brumbach, C.R.B. (Mr. Brumbach), an independent, qualified appraiser with Brumbach Associates, Inc. Mr. Brumbach represents that the Property, which is located in Pottstown, Montgomery County, Pennsylvania, is triangular in shape and contains 1.482 acres of vacant land. Mr. Brumbach relied on the comparable sales appraisal approach and determined that as of April 9, 1992, the fair market value of the Property was \$55,000. In a letter of June 8, 1992, Mr. Brumbach considered the applicability of a premium on the fair market value of the Property due to the fact that the Employer owns real estate which is adjacent to the Property, and concluded that the adjacency factor merits a premium of \$5,000 above the current fair market value. As such, the Plan will receive at least \$60,000 for the Property in this transaction.

4. It is represented that the transaction is desirable for the Plan as the sale will enable the Plan to divest itself of an asset which produces no

income and has limited appreciation potential. The transaction is protective and in the best interest of the Plan because the fair market value of the Property was determined by an independent, qualified appraiser, who also deemed that the adjacency factor merits a premium above the fair market value to the Plan in the proposed transaction.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The Plan in this transaction will receive the greater of: (1) \$60,000; or (2) the fair market value of the Property as determined at the time of sale by an independent, qualified appraiser plus a premium factor of \$5,000 due to its adjacency to the Employer's property;

(b) The proposed sale will be a one-time cash transaction;

(c) The Plan will pay no costs or commissions as a result of this transaction;

(d) The proposed transaction will enable the Plan to divest of an asset which produces no income and has limited appreciation potential.

For Further Information Contact:

Ekaterina A. Uzlyan of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Visalia Medical Clinic Inc. Money Purchase Plan (the M/P Plan) and Visalia Medical Clinic Profit Sharing Plan (the P/S Plan; collectively, the Plans) Located in Visalia, California

[Application Nos. D-8886 and D-8887]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of \$3,000,000 (the Loan) by the Plans to Visalia Medical Clinic Inc. (the Employer), the Plans' sponsor and a party in interest with respect to the Plans, provided the following conditions are satisfied:

(1) The terms of the Loan will be at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;

(2) The Loan will be structured such that each Plan will lend \$1,500,000 to the Employer;

(3) The outstanding balance on the Loan will at no time exceed 25% of each of the Plan's net assets;²

(4) The outstanding balance on the Loan will at no time exceed 25% of the Plans' aggregate net assets;

(5) The proposed terms of the Loan were evaluated by an independent fiduciary who deemed the transaction to be in the best interest and protective of the Plans, and who will also monitor the terms of the Loan, including the value of the collateral (the Collateral),³ over its duration;

(6) The independent fiduciary is independent of other parties involved in the transaction and the fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Employer or related parties, will not exceed 1% of his gross annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transaction described herein;

(7) The Plans will bear no costs or expenses with respect to the proposed transaction;

(8) The Loan will be adequately secured by the collateral, the loan to value ratio of which will always remain at least 200% of the Loan amount for the duration of the Loan;

(9) If, at the time the Loan is entered into, or any time thereafter, the fair market value of the Accounts Receivable is below the 200% loan to value ratio, the Employer will always pledge additional CDs as Collateral in order to meet the 200% requirement; and

(10) A.U.C.C. financial statement will be filed with the State of California upon the Department's grant of the proposed exemption, which will perfect the Plan's first security interest in the Collateral.

Summary of Facts and Representations

1. The Plans were restated effective January 1, 1989. As of July 22, 1991, the M/P Plan had 226 participants and the P/S Plan had 224 participants. As of December 31, 1990, the M/P Plan had assets of \$8,315,592 and the P/S Plan had assets of \$9,836,655 for an aggregate

² The term "net assets" for the purpose of this proposed exemption means, the Plans' assets from which the amount of outstanding participant loan balances made by the Plans to the Employer's shareholders and officers (ESOs) has been deducted.

³ For purposes of this proposed exemption, Collateral includes accounts receivable (the Accounts Receivable) of the Employer and certificates of deposit (CDs) in certain banks.

of \$18,152,247. The Employer has designated Security Pacific National Bank in San Francisco, California as the Plans' non-discretionary trustee. The Plans' administrator is Western States Administrators in Fresno, California. However, the Board of the Directors of the Employer has the ultimate responsibility for making investment decisions for the Plans. The Employer is a California corporation which consists of doctors and provides medical services to the public.

2. The applicant herein represents that prior to February 23, 1990, participant loans were permitted under both Plans. Thereafter, participant loans were permitted only under the P/S Plan. The Employer's administrator represents that to the best of his knowledge, all outstanding participant loans were made in compliance with section 408(b)(1) of the Act. As of the year 1991, the M/P Plan had an outstanding participant loan balance to the ESOs of \$20,729.27 and the P/S Plan had an outstanding balance of \$91,230.45. Therefore, as of 1991, the total amount owed by the ESOs to both Plans was \$111,959.72.

3. Thirty seven out of thirty nine shareholders of the Employer have created a real estate partnership known as Akers West Associates (AWA) to own the real property located at 5400 W. Hillsdale Avenue, Visalia, California (the Building). The Building is leased to the Employer and operates as the Employer's primary place of business. The Building, which is the only property owned by AWA, contains 70,300 square feet and is located on 10.2 acres of land. The current monthly lease amount payable to AWA by the Employer, as of January 1, 1992, is \$60,100. The Employer and AWA, are planning an expansion of the Building, hereby referred to as the Western Addition (the Western Addition). The Western Addition is projected to comprise approximately 25,290 square feet. The development will be done by Quiring Corporation which is located in Fresno, California, and is unrelated to the Plan and the Employer. It is represented that none of the partnerships, officers, directors or shareholders of AWA or the Employer have any relationship, professional or otherwise to Quiring Corporation.

4. It is proposed that the Employer be permitted to borrow \$3,000,000 from the Plans in order to finance the Western Addition. The Loan will be used for permanent financing and will be structured such that each Plan will lend \$1,500,000 to the Employer. Applying the concept of "net assets" which has been

previously defined herein,⁴ the Loan will involve 18.1% of the M/P Plan and 15.4% of the P/S Plan, and the total Loan of \$3,000,000 will involve 16.6% of the Plans' aggregate net assets. A Promissory Note (the Note) will be issued by the Employer to the Plans. The Loan will be secured by a first security interest in the Accounts Receivable of the Employer as well as by the CDs. The Collateral will equal at least 200% of the outstanding Loan balance throughout the term of the Loan.

5. The Note will have an interest rate (the Rate), which will be two percentage points greater than the prime rate quoted in the Wall Street Journal's (WSJ) western edition, a recognized, independent third party index (the Index). The Index is the WSJ prime rate as reported on a daily basis in the Money and Investing section of the WSJ. The prime rate is listed under "Money Rates" in the WSJ and is based on corporate loans posted by at least 75% of the U.S. 30 largest banks. The initial interest rate for the Note will be 10.5% per annum, with annual adjustments based on the Index. Such adjustments will not lower the Rate below 10.5% per annum. Mineral King National Bank (MKNB), which has been appointed to act as an independent fiduciary for the Plan in the proposed transaction, will examine the Index on each anniversary date of the Loan and will adjust the Rate to reflect changes in the Index.

6. The Note is amortized over a fifteen year period, but will be payable over a ten year period in 120 monthly payments of principal and interest. These payments for the first year of the Loan will be \$32,980 per month. However, these payments will be subject to change pursuant to the changes in the Index and the Rate. The Note also provides for a final balloon payment (the Balloon Payment) due in 2002, currently estimated at \$1,581,136. The Balloon Payment will consist of all principal and all accrued interest not yet paid. Under the terms of the Note, a default is deemed immediately upon the failure of the Employer to make a monthly payment on the due date. In the event the Employer decides to prepay the Note, the Employer will be charged a minimum prepayment fee without any additional charges or penalties. The terms of the Loan do not provide the Plan with any prepaid interest or loan origination fee at the beginning of the transaction as compensation for making

the Loan. However, MKNB notes that a minimum interest rate of 10.5% on the Loan with appropriate adjustments based on the Index throughout the duration of the Loan will more than compensate for the lack of prepaid interest or fees being charged on the Loan.

7. A Security Agreement (the Security Agreement) will be entered into by the Employer and MKNB. This Security Agreement will grant MKNB on behalf of the Plans, a first security interest in the Collateral. The Security Agreement explicitly states that the Employer as the Grantor represents and warrants to the MKNB as independent fiduciary for the Plans as the Lender that it holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Security Agreement. The Security Agreement also states that except for inventory sold or accounts collected in the ordinary course of the Employer's business, the Employer shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. The Employer shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance or charge, other than the security interest provided for by this Agreement, without the prior consent of MKNB.

8. The Accounts Receivable of the Employer were audited by an accounting firm of Scott, Doyal & Travioli (SD&T), which is located in Visalia, California. The Accounts Receivable represent amounts due to the Employer from its customers for medical services rendered as well as for the occasional provision of contract services to other health care providers in the Visalia area. MKNB will be responsible for ensuring that the Collateral is re-evaluated by SD&T on an annual basis. SD&T has a de minimis relationship with the Employer due to the provision of medical treatment to some of the partners of SD&T and/or members of their families. SD&T represent that they are in the business of providing accounting, auditing, personal and business financial planning, and tax and management services.

9. Duane W. Scott (Mr. Scott), one of the partners of SD&T, will be in charge of evaluating the Collateral to be pledged as security for this Loan transaction. According to an audit performed by SD&T, the Accounts Receivable had a total value of \$6,649,673 as of September 23, 1991. Mr. Scott represents that based on historical data and from reviewing the records of the Employer, "doubtful accounts" of the

Employer (Accounts Receivable which prove to be uncollectible), average approximately 11.4% of the Accounts Receivable. As a result, the applicant represents that for purpose of complying with the exemptive condition requiring that the Collateral be maintained at 200% of the Loan balance, at the inception of the Loan and at each annual audit of the Collateral, the Accounts Receivable will be discounted for "doubtful accounts", and that this discount will be 11.4% of the amount of the Accounts Receivable at that time. As such, in establishing the value of Collateral for purposes of maintaining the 200% loan to value ratio, at the time the Loan is entered into and at subsequent annual audits of the Collateral, Mr. Scott will utilize the discounting method described herein with respect to the Accounts Receivable.

10. In terms of the overall collectibility of the Accounts Receivable, Mr. Scott states that emphasis must be given to the fact that much of the Accounts Receivable are billed to Medicare and/or private insurance companies. The amount and certainty of collection for these billings is known and assured. The timing of the collection, however, is controlled by the federal or state governments and insurance companies and not by the collection efforts of the Employer. Specifically, the Accounts Receivable of the Employer as of September 23, 1991, consist of the following:

Current.....	\$1,500,737 (22.6%)
30-60 days.....	\$1,254,180 (18.9%)
60-90 days.....	\$667,721 (10%)
90-120 days.....	\$612,814 (9.2%)
over 120 days.....	\$2,614,221 (39.3%)
Total accounts.....	\$6,649,673
Allowance for doubtful accounts.....	(\$755,000)
	(11.4%)
Net accounts receivable.....	\$5,894,673

Accordingly, at the inception of the Loan, \$5,894,673 of the Accounts Receivable will be the amount utilized for purposes of establishing compliance with the exemptive condition requiring 200% loan balance to collateral ratio. Furthermore, in order to achieve the 200% loan to value ratio at the inception of the Loan, CDs in the amount of \$105,600 will also be pledged as Collateral. Prior to the consummation of the Loan transaction, another audit of the Accounts Receivable will be performed by SD&T, and at that time if the fair market value of the Accounts Receivable, after they have been discounted for "doubtful accounts", is still below the required 200% loan to value ratio, MKNB will make a determination regarding the pledge of additional CDs as Collateral. It is

⁴ *Supra*, note 1. Specifically, after accounting for currently outstanding participant loan balances to ESOPs, the M/P Plan has \$8,294,863 in net assets, the P/S Plan has \$9,745,425 in net assets and the Plans' aggregate net assets are \$18,040,287.

represented that additional CDs will be pledged as Collateral at those times during the duration of the Loan when additional Collateral is required, and that these CDs will be held with MKNB.⁵ Mr. Scott represents that future audits of the Collateral will include a review of CDs to ensure that CDs are not otherwise encumbered or used as collateral for any other purpose. A U.C.C. financial statement will be filed with the State of California upon the Department's approval of the pending exemption, which will perfect the Plan's first security interest in the Collateral, including the CDs.

11. MKNB is a bank located in Visalia, California and as mentioned above will serve in the independent fiduciary capacity with respect to the Loan transaction. MKNB represents that it is qualified to act in the independent fiduciary capacity. MKNB also represents that it has considerable experience in monitoring loans secured by accounts receivable. MKNB maintains that it understands its responsibilities as an ERISA fiduciary and that its income derived from the Employer or related parties, including serving in the independent fiduciary capacity for this transaction, will not exceed 1% of the MKNB's gross annual income for each fiscal year that it serves in such independent fiduciary capacity. The applicant represents that MKNB currently has 855,054 shares outstanding, of which 16,058 are owned by some of the shareholders of the Employer. MKNB, however, represents that this ownership relationship is de minimis. Specifically, in this regard, Dr. T.A. Aiken owns 4,055 shares, Dr. D.L. Heiges owns 4,275 shares, Dr. Benny C. Lee owns 3,927 shares and the estate of Dr. R.E. Phillips owns 3,801 shares. Also, Dr. Lee is a member of the Board of Directors of the Employer. However, it is represented that Dr. Lee has agreed to abstain from any discussion and/or casting a vote in any decision or agreement between the Employer and MKNB. MKNB represents that it does not control, is not controlled by, and is not under common control with the Employer and is not otherwise affiliated with the Employer. No shareholder of the Employer holds a position as

director or senior management official of the MKNB.

12. In its capacity as independent fiduciary, MKNB will monitor compliance with the terms of the Loan. Specifically, MKNB has reviewed the interest rate, the loan terms and the Collateral for the proposed Loan and finds them to be fair and reasonable as well as commensurate with the interest rates, terms and collateral which would be required by an independent financial institution on a similar loan. MKNB also states that an investigation has been conducted regarding the Employer's payment history on other loans which are currently outstanding and therefore was able to determine that the Employer has made payments in a timely manner. MKNB represents that after reviewing a U.C.C. search they were able to conclude that there are no other lenders having any security interest in the Accounts Receivable. MKNB will monitor the Loan throughout its duration to assure that the Note and the Security Agreement terms are complied with, the payments are made when due, and that the loan to value ratio of the Collateral remains at least 200% of the Loan balance throughout its duration. MKNB also represents that they will review annual audits of the Collateral performed by SD&T and in the event the loan to value ratio of the Collateral falls below the required 200% at any time during the term of the Loan, they will contact the Employer to provide additional collateral. MKNB will also be responsible for enforcing collection of all payments in the event of default.

13. MKNB herein represents that it has conducted an independent survey of the current real estate market regarding loans to businesses for the purposes of improvements and/or expansion to real estate. MKNB has also reviewed the Plans' asset portfolio for the year 1990, and concluded that the Loan is a prudent investment which will provide further diversification of the Plans' assets. MKNB represents that the Loan by the Plans will provide an attractive rate of return, benefiting all participants in the Plans. Furthermore, it is represented that the Plans will not bear any costs with respect to this Loan transaction. The Loan provides for a minimum interest rate of 10.5% and is adequately secured, and the Employer has a record of meeting its financial commitments. As such, MKNB was able to conclude that the Loan is in the best interest and protective of the Plans. Investment portfolio of the Plans historically included balance equity and fixed income investments to provide diversification and limit risk. The Loan

will provide a minimum return of approximately 2% per year greater than the present fixed income investments have generated for the Plans over the last several years. MKNB maintains that a complete review and examination of the Employer's financial condition has been conducted. Based on this review and the financial history of the Employer, MKNB has concluded that with respect to the Loan, the Employer should be able to make payments in a timely manner. Bank of Sierra, an independent financial institution, has also reviewed the Note and the Security Agreement, and confirmed that its terms and security are fair and commercially reasonable, as well as similar to those required by an independent financial institution when making a comparable loan, provided the borrower is creditworthy.

14. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

- (1) The terms of the Loan will be at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;
- (2) The Loan will be structured such that each Plan will lend \$1,500,000 to the Employer;
- (3) The outstanding balance on the Loan will at no time exceed 25% of each of the Plan's net assets;
- (4) The outstanding balance on the Loan will at no time exceed 25% of the Plans' aggregate net assets;
- (5) The proposed terms of the Loan were evaluated by an independent fiduciary who deemed the transaction to be in the best interest and protective of the Plans, and who will also monitor the terms of the Loan, including the value of the Collateral, over its duration;
- (6) The independent fiduciary is independent of other parties involved in the transaction and the fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Employer or related parties, will not exceed 1% of his gross annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transaction described herein;

(7) The Plans will bear no costs or expenses with respect to the proposed transaction;

(8) The Loan will be adequately secured by the Collateral, the loan to value ratio of which will always remain at least 200% of the Loan amount for the duration of the Loan;

⁵ It is represented by MKNB that CDs will be issued by either First Interstate Bank, Wells Fargo Bank or the Bank of America, depending on the results of negotiations to obtain the most favorable interest rate.

Perfection of the security interest in CDs is obtained by MKNB's actual possession of the CDs. Possession will be obtained by MKNB in this situation if CDs are to be pledged as security for the Loan.

(9) If, at the time the loan is entered into, or at any time thereafter, the fair market value of the Accounts Receivable is below the 200% loan to value ratio, the Employer will always pledge additional CDs as Collateral in order to meet the 200% requirement; and

(10) A U.C.C. financial statement will be filed with the State of California upon the Department's approval of the pending exemption, which will perfect the Plan's first security interest in the Collateral.

FOR FURTHER INFORMATION CONTACT:

Ekaterina A. Uzlyan of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each

application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of July, 1992.

Ivan Strasfield,

Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 92-18192 Filed 7-30-92; 8:45 am]

BILLING CODE 4510-29-M

Employment and Training Administration

[TA-W-27, 421]

Marshall Exploration, Inc., Marshall, Texas; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 22, 1992 in response to a worker petition which was filed on June 9, 1992 on behalf of workers at Marshall Exploration, Incorporated, Marshall, Texas. This Company is a wholly owned subsidiary of Sonat Exploration Company, the subject of investigation TA-W-27, 358.

Marshall's operations and employees were merged with Sonat's in the summer of 1991 and are included in the data submitted by Sonat under investigation TA-W-27, 358. A certification was issued to all Sonat workers (corporate-wide) in July 1992 and will remain in effect for two years. This determination covers the workers at the site of the subject investigation. Therefore, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18937 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,068 Mustang Fuel Corporation, Oklahoma City, Oklahoma; TA-W-27,069 Mustang Transport Company, Okarche, Oklahoma]

Mustang Fuel Corp.; Notice of Revised Determination on Reconsideration

On July 10, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Mustang Fuel Corporation in Oklahoma City, Oklahoma. The notice

will soon be published in the *Federal Register*.

New findings on reconsideration show that the Mustang Fuel Corporation is not a service company but is an integrated producer. Mustang Fuel owns wells and sells crude oil and natural gas to customers. Revenues from its exploration and production division account for a substantial portion of its revenues.

Other findings on reconsideration for Mustang Fuel Corporation show crude oil and natural gas sales, in quantity, decreasing in the first five months of 1992 compared to the same period in 1991 and in 1991 compared to 1990. Significant worker separations occurred in the first half of 1992.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in the period April 1991 through March 1992 as compared to the year earlier.

Other findings on reconsideration show major crude oil customers decreasing their purchases of crude oil from Mustang Fuel Corporation and increasing their import purchases, in quantity, in the first half of 1992 compared to the same period in 1991.

The Department's initial denial issued on June 3, 1992, for workers at Mustang Transport Company explained the very limited circumstances in which service workers are certified for trade adjustment assistance. Despite the certification of Mustang Transport's parent company, these conditions still are not met. New findings on reconsideration show that only a small and unimportant portion of the activities performed by the Mustang Transport Company are for the Mustang Fuel Corporation. The predominant portion of their transport services is for unaffiliated third parties.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that Mustang Fuel Corporation workers in Oklahoma City, Oklahoma were adversely affected by increased imports of articles like or directly competitive with the crude oil produced at Mustang Fuel Corporation in Oklahoma City, Oklahoma. In accordance with the provisions of the Act, I make the following revised certification for workers of the Mustang Fuel Corporation in Oklahoma City, Oklahoma.

"All workers of Mustang Fuel Corporation in Oklahoma City, Oklahoma who became or partially separated from employment on or after January 1, 1992 are eligible to apply for

adjustment assistance under Section 223 of the Trade Act of 1972."

I further determine that the Department's initial denial for workers at the Mustang Transport Company, Okarche, Oklahoma be affirmed.

Signed at Washington, DC., this 24th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 92-18395 Filed 8-3-92; 8:45 am]

BILLING CODE 4810-30-M

[TA-W-26, 789]

SIA of America, Alliance, Ohio; Negative Determination Regarding Application for Reconsideration

By an application dated April 21, 1992, Local #411 of the International Chemical Workers Union (ICWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 14, 1992 and published in the Federal Register on April 27, 1992 (57 FR 15331).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that company imports of sandpaper increased until the plant was closed in February 1992 and sold to Sancap Abrasives who became a distributor of imported sandpaper.

Investigation findings show that Swiss Industrial Abrasives (SIA) owned the Alliance, Ohio plant. The sandpaper produced included over 30 different grades or types of industrial sandpaper—including sandpaper sheets, sandpaper belts and sandpaper discs.

Other findings show that company imports of sandpaper decreased substantially in 1991 compared to 1990. Further, company officials indicated that the articles imported from Switzerland were never produced at Alliance. Company officials stated that the plant was sold because it was a high cost plant.

The Department's denial was based on the fact that the "contributed

importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of the subject firm's major declining customers (in quantity) showed that none imported industrial sandpaper.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 24th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-18398 Filed 8-4-92; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., app. 1) and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656(b), will convene on September 2, 1992, at 12:30 p.m., at the Stouffer Harbor Hotel, 202 East Pratt Street, Baltimore, Maryland, 21202. The meeting will adjourn on September 3, 1992, at approximately 12:30 p.m. The public is encouraged to attend.

The agenda is as follows:

I. Call to Order.

II. Discussion of the Federal Register notice, published June 24, 1992, to reopen the record of 29 CFR 1915, subpart B, "Explosive and Other Dangerous Atmospheres," (57 FR 28152).

PUBLIC PARTICIPATION: The Committee will consider oral presentations relating to the agenda item. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, August 25, 1992. The request must include the name and address of the person wishing to appear, the

capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed. Disabled individuals wishing to attend should contact Mr. Thomas Hall to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 5 copies to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8617.

Signed at Washington, DC, this 29 day of July, 1992.

Dorothy L. Strunk

Acting Assistant Secretary of Labor.

[FR Doc. 92-18354 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. S-024]

Shipyard Employment Standards Advisory Committee; Renewal

AGENCY: Office of the Secretary, U.S. Department of Labor.

ACTION: Renewal of Shipyard Employment Standards Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. 1), and after consultation with the General Services Administration (GSA), I have determined that the renewal of the charter of the Shipyard Employment Standards Advisory Committee is necessary and is in the public interest.

The Committee will advise the Assistant Secretary for Occupational Safety and Health on the preparation of one comprehensive set of standards for the shipbuilding, ship repair, and shipbreaking industries by combining parts 1910 and 1915 standards, updating, reorganizing, clarifying, and simplifying those standards.

The Committee will consist of not more than 15 members and proportionately includes individuals appointed to represent the following affected interest: Labor organizations, industry, Federal safety and health officials, State health and safety officials, professional organizations, and national standards setting groups. Accordingly, its charter will be filed 15 days from the date of this notice.

Interested persons are invited to submit comments regarding the renewal

of the Shipyard Employment Standards Advisory Committee. Such comments should be addressed to: Mr. Tom Hall; OSHA Division of Consumer Affairs; room N 3637; U.S. Department of Labor; 200 Constitution Avenue, NW.; Washington, DC 20210.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Signed at Washington, DC, July 29, 1992.

Lynn Martin,
Secretary of Labor.

[FR Doc. 92-18447 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Health Care of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 12:30 p.m., Tuesday, September 8, 1992, in Suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

This Health Care Working Group was formed by the Advisory Council to study issues relating to Health Care for employee benefit plans covered by ERISA.

The purpose of the September 8 meeting is to evaluate testimony received from expert witnesses, other data and to discuss conclusions and recommendations to be made to the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit written request on or before September 1, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory

Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-18346 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Pension Investment Activity of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:00 a.m., Wednesday, September 9, 1992, in suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Pension Investment Activity Working Group was formed by the Advisory Council to study issues relating to Pension Investment Activity for employee benefit plans covered by ERISA.

The purpose of the September 9 meeting is to discuss background materials and testimony related to economically targeted investments. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit written request on or before September 1, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-18347 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SPACE COUNCIL

Meeting of the Space Industrial Base Capability Task Group

AGENCY: National Space Council.

ACTION: Notice of partial meeting closure.

SUMMARY: The Space Industrial Base Capability Task Group will meet in closed session from 10:30 a.m. to 12 Noon on August 7, 1992.

DATES: August 6 and 7, 1992.

ADDRESSES: 1215 Jefferson Davis Highway, Suite 800, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Eva Czajkowski, (703) 685-3568, or Joe Scifers, National Space Council, Executive Office of the President, Washington, DC, (202) 395-6175.

SUPPLEMENTARY INFORMATION: As previously announced (57 FR 31743, July 17, 1992), the Space Industrial Base Capability Task Group will meet on August 6 and 7, 1992, at ANSER, Suite 800, 1215 Jefferson Davis Highway, Arlington, Virginia. The meeting times, however, have been changed; the group will meet between 8:00 a.m. and 5:15 p.m. on August 6, 1992, and between 8:30 a.m. and 12:00 Noon on August 7, 1992. This meeting will be closed to the public from 10:30 a.m. to 12:00 Noon on August 7, 1992, under exemption 4 (privileged or confidential commercial and financial information) of 5 USC 552(b)(3). All other portions will be in open session. Persons interested in attending should contact Eva Czajkowski, ANSER, (703) 685-3568.

Joe Scifers,

Committee Action Officer.

[FR Doc. 92-18393 Filed 8-3-92; 8:45 am]

BILLING CODE 3128-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-10 (50-282 & 50-306)]

Northern States Power Co.; Issuance of Environmental Assessment and Finding of No Significant Impact for the Prairie Island Independent Spent Fuel Storage Installation at the Prairie Island Nuclear Generating Plant

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a materials license under the requirements of title 10 of the Code of Federal Regulations, part 72 (10 CFR part 72), to Northern States Power Company (NSP or the Applicant), authorizing receipt and storage of spent fuel in an independent spent fuel storage installation (ISFSI) located onsite at its

Prairie Island Nuclear Generating Plant, Goodhue County, Minnesota. The Commission's Office of Nuclear Material Safety and Safeguards, Division of Industrial and Medical Nuclear Safety has completed its environmental review in support of the issuance of a materials license. The "Environmental Assessment Related to Construction and Operation of the Prairie Island Independent Spent Fuel Storage Installation" has been issued in accordance with 10 CFR part 51.

Description of the Proposed Action

The proposed licensing action would authorize the Applicant to construct and operate a dry storage ISFSI. The function of the ISFSI is to provide interim storage for up to 1920 fuel assemblies from Prairie Island Units 1 & 2. Forty fuel assemblies are loaded into each cask within the Prairie Island reactor building, and subsequently transferred to the ISFSI. The license for an ISFSI under 10 CFR part 72 is issued for 20 years, but the licensee may seek to renew the license, if necessary, prior to its expiration.

Need for the Proposed Action

Discharged spent fuel assemblies from Prairie Island Units 1 and 2 are currently stored on-site in a spent fuel pool. The spent fuel pool provides for long-term storage of 1386 assemblies in high density storage racks. The spent fuel pool will lose capacity for discharge of a full core in 1993. Storage capacity will be exhausted completely in 1994. The capacity of the ISFSI will enable NSP to store an additional 1920 spent fuel assemblies in 48 casks, and will enable Units 1 and 2 to continue operation until expiration of their respective Operating Licenses in 2013 and 2014.

The staff recognizes that the Minnesota Public Utilities Commission announced its intention to approve the construction of only 17 casks rather than the 48 which were requested. This announcement is separate from the NRC's analysis and proposed action.

Environment Impacts of the Proposed Action

As discussed in the EA, no significant impacts from construction of the ISFSI are anticipated. Similarly, no significant impacts are expected from ISFSI operations. The activities will affect only about 10 acres of land. Potential impacts from fugitive dust, erosion and noise levels, which are typical for the planned construction activities, are minimal and with good construction practices will be controlled to insignificant levels.

The radiological impacts from liquid and gaseous effluent arising from cask loading and preparation are minimal. They fall within the scope of impacts evaluated for licensed reactor operations and are controlled by the existing Prairie Island reactor technical specifications. The primary radiological exposure pathway associated with ISFSI operation is direct irradiation of nearby residents and site workers. The highest dose to the nearest resident for any year is about 0.08 mrem, which is well within the 25 mrem/year maximum dose permitted by 10 CFR 72.104. The highest collective dose commitment for any year to the population within two miles of the ISFSI will not exceed 0.032 person-rem. Dose levels beyond this distance are insignificant. The radiological impacts from the postulated worst-case accident at the ISFSI are within the 5 rem criteria for whole body and organ doses to an individual, as specified in 10 CFR 72.106(b) and are less than the Environmental Protection Agency Protective Action Guides for individuals exposed to radiation as a result of accidents.

Alternatives to the Proposed Action

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG-0575, found that ISFSI's represent a major means of interim storage at a reactor site. While the environmental impacts of the dry storage ISFSI option were not specifically addressed in the FGEIS, the use of alternative dry passive storage techniques for aged fuel appeared to be as feasible as wet storage and environmentally acceptable. However, environmental impacts need to be considered on a site-specific basis.

Several alternatives were discussed in the EA, but none were more protective of the environment nor was any alternative sufficient to meet the spent fuel storage requirements for the Prairie Island Nuclear Generating Plant. Because the Commission has concluded there are no significant environmental impacts associated with the proposed action, any alternative of equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The only resources committed irretrievably and not previously considered in environmental documents relating to the Prairie Island Nuclear Generating Plant are the steel, concrete, and other construction materials used in the ISFSI.

Agencies and Persons Contacted

Outside agencies that were contacted supporting documentation in connection with the preparation of the Environmental Assessment include: Minnesota Environmental Quality Board; American National Standards Institute/American Nuclear Society; Sandia National Laboratory; Environmental Protection Agency.

Finding of No Significant Impact

In summary, the ISFSI is located in a highly disturbed area within the confines of the Prairie Island Nuclear Generating Plant Exclusion area and will require only a minor commitment of land resources. The proposed action is not expected to cause any significant release of effluent, and there will be no significant increases in individual and collective radiation doses to either the public or onsite workers. Potential offsite impacts from a postulated worst-case credible accident are a small fraction of the regulatory limits of 10 CFR 72.106, and well below the Environmental Protection Agency's Protective Action Guides. Therefore, the proposed action will not significantly affect the quality of the human environment. Accordingly, pursuant to the requirements of 10 CFR 51.31 and 10 CFR 51.32, the Commission has determined that a finding of no significant impact is appropriate and that an environmental impact statement (EIS) need not be prepared for the issuance of a materials license for the Prairie Island ISFSI. The EA for the proposed action, on which this Finding of No Significant Impact is based, relied upon several environmental documents, with independent assessment of data, analyzes and results. The following documents were utilized:

- (1) "Final Environmental Statement Related to the Prairie Island Nuclear Generating Plant," dated May 1973;
- (2) "Prairie Island Independent Spent Fuel Storage Installation Environmental Report," Revision 1, Northern States Power, September 1991;
- (3) "Final Environmental Impact Statement on the Prairie Island Independent Spent Fuel Storage Installation" Minnesota Environmental Quality Board, April 12, 1991;
- (4) "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," U.S. Nuclear Regulatory Commission, 10 CFR part 51;
- (5) Federal Guidance Report #11, Environmental Protection Agency, EPA 520, 1-88-020;

(6) "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG-0575, Volumes 1-3, August 1979.

The EA and other documents related to this proposed action are available for public inspection and for copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located in the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, MN 55401.

Dated at Rockville, Maryland, this 28th day of July 1992.

For The Nuclear Regulatory Commission.
Charles J. Haughney,
Chief, Source Containment and Devices
Branch, Division of Industrial and Medical
Nuclear Safety, NMSS.
[FR Doc. 92-18385 Filed 8-3-92; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on August 18, 1992, at the Holiday Inn, 8120 Wisconsin Avenue, in the Versailles IV Room, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information deemed proprietary to General Electric (GE) Nuclear Energy pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows: *Tuesday, August 18, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the GE Nuclear Energy's generic program supporting power uprates for boiling water reactor plants and the NRC staff's Safety Evaluation Report that supports the power uprate for the Enrico Fermi Nuclear Power Plant, Unit 2.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be

present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, GE Nuclear Energy, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. (E.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 28, 1992.
Sam Duraiswamy,
Chief, Nuclear Reactors Branch.
[FR Doc. 92-18378 Filed 8-3-92; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on August 19, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, August 19, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will discuss the General Electric (GE) Nuclear Energy's and the NRC staff's responses to the issues included in the April 13, 1992 ACRS letter to the NRC Executive Director for Operations (EDO) regarding the Draft Safety Evaluation Report for the GE Advanced Boiling Water Reactor design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by

members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, GE Nuclear Energy, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. (E.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 28, 1992.
Sam Duraiswamy,
Chief, Nuclear Reactors Branch.
[FR Doc. 92-18377 Filed 8-3-92; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Joint Meeting of the Subcommittees on Plant License Renewal/Reliability and Quality; Meeting

The ACRS Subcommittees on Plant License Renewal and Reliability and Quality will hold a joint meeting on August 18, 1992, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, August 18, 1992—1 p.m. until the conclusion of business.*

The Subcommittees will review the proposed Branch Technical Position on Equipment Qualification for Plant License Renewal.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee

Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, nuclear industry, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. (e.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 28, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-18370 Filed 8-3-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-237]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 2); Exemption

I.

Commonwealth Edison Company (CECo, the licensee) is the holder of Facility Operating License No. DPR-19 which authorizes operation of the Dresden Nuclear Power Station, Unit 2 (the facility) at a steady-state power level not in excess of 2527 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Grundy County, Illinois. This license provides, among other things, that the facility is subject to all rules, regulations

and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II.

By letter dated May 27, 1992, pursuant to 10 CFR 50.12(a), Commonwealth Edison requested a scheduler exemption for Dresden Unit 2 from the 24-month test interval for Type B and C leak rate tests required by 10 CFR part 50, appendix J, Sections III.D.2(a) and III.D.3. The exemption is requested to support the Dresden Unit 2 refueling outage schedule and to avoid the potential for an earlier reactor shutdown.

Dresden Unit 2 entered into the Cycle 12 refueling outage (D2R12) on September 23, 1990. Type B and C local leak rate testing began on September 23, 1990 and continued through January 3, 1991. However, several unanticipated events caused an unusually long outage with startup not occurring until February 10, 1991. In addition, Dresden Unit 2 entered several maintenance outages during Cycle 13. This included a 111 day outage, while Unit 3 was in a refuel outage, to resolve problems relating to the 250 Volt station battery, divisional cable separation, and undervoltage concerns. As a result of these extended outages, complete fuel utilization will not be achieved by the originally scheduled refuel outage in September 1992. CECo is anticipating rescheduling the Dresden Unit 2 refuel outage from September 1992 to January 4, 1993, and has requested a maximum exemption of up to 122 days, for the most extreme case, from the 24-month Appendix J test interval for Type B and C testable volumes for the penetrations that can not be tested during operation.

III.

In its letter dated May 27, 1992, CECo requested a one-time exemption from the 24-month Type B and C test interval requirement of Appendix J for certain volumes (i.e., bellows, manway gasket seal, flanges, and isolation valves) identified in Attachments II and III to the submittal. CECo stated that these volumes can not be tested while the reactor is at power and provided the basis for this conclusion in Attachment IV of the submittal.

CECo has provided leakage test results and maintenance information on these volumes for the past two testing programs conducted in the 1988-1990 time frame. The current maximum pathway leakage rate for Dresden Unit 2 as determined through Type B and C leak rate testing, is 333.53 Standard Cubic Feet Per Hour (scfh). This value is approximately 68% of the Technical

Specification limit of 488.45 scfh (0.6 L₉₅). As a result of additional maintenance being performed on various pathways during Cycle 13, the current leakage rate has been reduced from the D2R12 "As Left" leakage rate of 362.29 scfh. In addition, the D2R12 "As Left" total minimum pathway leakage rate for Type B and C testable penetrations was 126.69 scfh. The minimum pathway data from the last two Unit 2 refuel outages also indicates that on a minimum pathway basis, the quality of primary containment does not degrade excessively through the course of the fuel cycle. In addition, the D2R12, "As Left" Integrated Leak Rate Test, completed on December 18, 1990, indicated that the primary containment overall integrated leakage rate, which obtains the summation of all potential leakage paths including containment welds, valves, fittings, and penetrations, was 0.8128 wt%/day. This value is the sum of the 95% upper confidence limit calculated leak rate of 0.7428 wt%/day plus the leakage rate of all nonvented pathways and the leakage compensation for the change in the drywell sump levels. This value is approximately 67% of the limit specified in the Technical Specifications (1.2 wt%/day or 0.75 L₉₅).

In order to provide an added margin of safety and to account for possible increases in the leakage rates of untested volumes during the relatively short period of the exemption, the Dresden Nuclear Power Station will impose an administrative limit for maximum pathway leakage of 85% of 0.6 L₉₅ for the remaining Unit 2 fuel cycle.

To reduce the number of volumes which need an exemption, CECo will test the volumes listed in Attachment V of its submittal during reactor operation. In addition, volumes listed in Attachment III of its submittal will be tested should a forced outage of suitable duration occur prior to January 4, 1993.

The staff has reviewed CECo's submittal regarding the Appendix J test interval exemption request. Based on the above discussion, the staff finds that for the components identified in Attachments II and III of the submittal, an exemption from the local leak rate (LLRT) test frequency specified in Appendix J should be granted based on the following.

1. Testing has shown low "as found" leakage during the past two outages. The ample margin between the measured leakage and the allowable leakage should accommodate any degradation likely to be experienced for these components during the extended period.

2. The intent of appendix J was that Type B and C testing be performed during a refueling outage. It is not the intent of appendix J to require a shutdown solely for LLRTS. The exemption would provide relief from the requirements of appendix J to allow a test interval extension for these components which only became necessary as a result of the unusually long Cycle 12 refueling outage.

3. Although a 122 day extension has been requested, many of the affected volumes will need an exemption for a much shorter time.

Based on the above, the staff concludes that the licensee's proposed extension of the test intervals for these components identified in its submittal are acceptable. This is a one-time exemption from the two-year Type B and Type C test interval requirements as prescribed in Appendix J, and is intended to be in effect until January 4, 1993. This approval is based on the assumption that all other tests will be conducted in accordance with the requirements of appendix J.

IV.

By letter dated May 27, 1992, CECO also identified special circumstances. As discussed above, the exemption request is for a short duration relative to the two year requirement. In addition, all testing that can be reasonably performed while the plant is operating will be completed and additional testing will be performed if an unscheduled outage of suitable duration should occur. This meets a criterion for a special circumstance per item (v) of 10 CFR 405.12(a)(2), i.e., "The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation."

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), that (1) this exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest, and (2) the Exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants an exemption as described in section III above from 10 CFR 50, appendix J, sections III.D.2(a) and III.D.3 to the extent that the 24-month interval for performing Type B tests, except for air locks, and Type C tests may be extended for 122 days until January 4, 1993, on a one-time basis only, for Dresden Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (57 FR 32570).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of July 1992.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18383 Filed 8-3-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-446]

Texas Utilities Electric Co., et al. Comanche Peak Steam Electric Station, Unit 2; Order Extending Latest Construction Completion Date.

The Texas Utilities Electric Company (TU Electric) is the holder of Construction Permit No. CPPR-127 issued by the Atomic Energy Commission on December 19, 1974, for construction of the Comanche Peak Steam Electric Station, Unit 2, a nuclear facility utilizing a Westinghouse Electric Corporation nuclear steam supply system, at the Applicant's site in Somervell County, Texas.

By letter dated February 3, 1992, as supplemented on March 16, 1992, TU Electric filed a request for extension of the latest construction completion date specified in Construction Permit No. CPPR-127 to August 1, 1995. In its justification for the extension request TU Electric stated that the estimated one-year suspension of Unit 2 construction, which began in April 1988, was necessary to allow TU Electric to concentrate its resources on the completion of Unit 1. The completion and startup of Unit 1 took longer than anticipated, forcing TU Electric to delay significant design activities on Unit 2 until June 1990, followed by the resumption of significant construction activity in January 1991.

As discussed more fully in the staff's evaluation of the requested extension, we have concluded good cause has been shown for the delay and that the requested extension is for a reasonable period. We have further concluded that the requested extension involves no significant hazards consideration, and therefore no prior public notice is required.

The NRC staff has prepared an Environmental Assessment and Finding of No Significant Impact which was published in the *Federal Register* on June 29, 1992 (57 FR 28885). The NRC staff has concluded that this action will

not have a significant impact on the quality of the human environment, and therefore, no environmental impact statement need be prepared.

For further details with respect to this action, see the applicant's request for extension dated February 3, 1992, as supplemented by letter dated March 16, 1992, and the staff's evaluation of the request, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

It is hereby ordered That the latest construction completion date for CPPR-127 be extended to August 1, 1995.

Dated at Rockville, Maryland, this 28th day of July 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18384 Filed 8-3-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (ACM Government Securities Fund, Inc., Common Stock \$.01 Par Value) File No. 1-9782

July 29, 1992

ACM Government Securities Fund, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, the Directors of the Fund approved the listing of the Common Stock on the PSE on a trial basis. Two years' experience with the Fund's PSE listing has indicated that the benefits expected to be derived from the listing, such as greater visibility, increased liquidity resulting from ninety minutes of extra auction trading each business day, and the services of two additional exchange specialists have not materialized, if only because the volume of trading of shares

of the Fund's Common Stock on the PSE has never assumed significant proportions. Therefore, the Board of Directors of the Fund has concluded that, although the expense of maintaining the listing is modest, the lack of benefit therefrom does not warrant the continuation of a listing on the PSE.

Any interested person may, on or before August 19, 1992, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92-18356 Filed 8-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18867; File No. 812-7921]

Equitable Variable Life Insurance Company, et al.

July 27, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for an Order of Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Equitable Variable Life Insurance Company ("Equitable Variable"), Separate Account FP of Equitable Variable Life Insurance Company (the "Account") and The Equitable Life Assurance Society of the United States ("Equitable") (Equitable Variable, the Account and Equitable are collectively referred to herein as "Applicants").

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(a)(3) of the 1940 Act and Rule 6e-3(T)(b)(13)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them to issue flexible premium variable life insurance policies (the "Contracts") that provide for both a sales charge of 3% on premium

payments made in any contract year where such premium payments exceed one year's "target premium" and a sales charge higher than the 3% sales charge on other premium payments made pursuant to the Contracts.

FILING DATE: The application was filed on May 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 pm., on August 21, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit, or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC, 20549. Applicants: 787 Seventh Avenue, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, at (202) 272-5415 or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Equitable Variable, a wholly-owned subsidiary of Equitable, is a stock life insurance company organized under the laws of New York. Equitable Variable established the Account pursuant to the insurance laws of New York. The Account is a separate account within the meaning of the 1940 Act and is registered under the 1940 Act as a unit investment trust. For purposes of certain provisions of the 1940 Act, the Account is deemed to be an issuer of periodic payment plan certificates. Equitable Variable is the principal underwriter for the Contracts. As the parent of Equitable Variable, Equitable may also be deemed a principal underwriter of the Contracts. Both Equitable and Equitable Variable are registered as broker-dealers under the Securities Exchange Act of 1934.

2. Equitable Variable intends to offer the Contracts in reliance upon rules 6c-3 and 6e-3(T) under the 1940 Act and,

with respect to each, has elected to be governed by rule 6e-3(T)(b)(13)(i)(A).

3. The Contracts include a front-end sales charge equal to: (a) 30% of all premiums paid in the first contract year up to one target premium and 3% of all premium payments paid during the first contract year in excess of the target premium (the "Additional Premiums"), plus (b) 7.5% of all premiums paid in each subsequent contract year up to one target premium and 3% of all Additional Premiums paid in each such contract year. The 7.5% charge referred to in clause (b) above will be reduced to 6% where the sum of the ages of the two insureds named in the Contract at issue exceeds 133 years. Applicants state that the target premium for determining the front-end sales charge will vary among insured persons depending upon the face amount of the Contract as well as the insured individual's gender, smoker/non-smoker status and issue age. Applicants represent, however, that the target premium will never exceed the guideline annual premium prescribed by rule 6e-3(T)(c)(8) under the 1940 Act.

4. Death proceeds under the Contracts are payable upon the death of the second of the two insureds named in the Contract, rather than upon the death of a single named insured.

Applicants' Legal Analysis

1. Section 27(a)(3) of the 1940 Act provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment and further provides that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment. Rule 6e-3(T)(b)(13)(ii) provides a partial exemption from the prohibitions of section 27(a)(3) provided that the proportionate amount of sales charge deducted from any payment does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or reductions in sales loads for amounts transferred to a variable life insurance policy from another plan of insurance.

2. Applicants request an exemption from the requirements of section 27(a)(3) and rule 6e-3(T)(b)(13)(ii) because, under the Contracts' sales charge structure, if Additional Premiums are paid in any contract year, premiums paid in any subsequent contract year not in excess of one year's target premium will be

subject to a higher sales charge than were the Additional Premiums.

3. Applicants submit that the requested relief is necessary because a sales charge of 3% imposed on Additional Premiums is lower than the 7.5% sales charge that will apply to the first target premium paid in each contract year after the first. Applicants state that, had they chosen to impose the full 7.5% sales charge on all Additional Premiums rather than the lower sales charge of 3%, the Contracts would comply with all of the sales charge limitation of rule 6e-3(T) and would also qualify under the exemptive provisions of rule 6e-3(T)(b)(13)(ii).

4. Applicants state that the higher sales charge on the target premium paid under a Contract in any contract year, as compared with the sales charge imposed on Additional Premiums in the same contract year, reflects in part the lower overall distribution costs (e.g., commissions paid to sales persons) that Equitable Variable will incur in connection with Additional Premiums over the life of the Contracts. To impose the full 7.5% sales charge on Additional Premiums would generate more revenue than Equitable Variable believes necessary to adequately defray its expenses.

Applicants submit that it would not be in the interest of contractowners to require the imposition of a sales charge on Additional Premiums where such charge is higher than Applicants deem necessary. Applicants further represent that contractowners will benefit from the sales charge structure and that the prospectus for the Contracts will contain disclosure informing contractowners how to minimize sales charge deductions from premiums paid.¹

5. Applicants argue that section 27(a)(3) was designed to address the abuse of periodic payment plan certificates under which large amounts of front-end sales charges were deducted so early in the life of the plan that an investor redeeming in the early periods would recoup little of his retirement since only a small portion of the investor's early payments were actually invested. Applicants note, however, that by not imposing an additional 4.5% sales charge on Additional Premiums paid in any contract year, Equitable Variable will cause a greater proportion of the Contracts' sales charges to be deducted later than otherwise would be the case.

Conclusion

For the reasons stated above, Applicants submit that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18357 Filed 8-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25594]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 31, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 20, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declaration(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Connecticut Light and Power Company; (70-8038) EUA Power Corporation

The Connecticut Light and Power Company ("CL&P"), P.O. Box 270, Hartford, Connecticut 06037, an electric public-utility subsidiary company of

Northeast Utilities, a registered holding company, and EUA Power Corporation ("EUA Power"), 40 Stark Street, P.O. Box 4326, Manchester, New Hampshire 03105, an electric public-utility subsidiary company of Eastern Utilities Associates, a registered holding company, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 44 and 50(a)(5) thereunder.

The proposed transactions relate to the financing of certain expenses of EUA Power, a debtor in possession under chapter 11 of the Bankruptcy Code, including its share of the costs relating to the operation of the Seabrook Nuclear Power Plant ("Seabrook"), a nuclear plant located in Seabrook, New Hampshire. EUA Power owns a 12.1324% joint interest in Seabrook.

By order dated September 26, 1991 (HCAR No. 25386), the Commission authorized certain financing pursuant to a Stipulation and Consent Order ("First Stipulation") among EUA Power, CL&P, The United Illuminating Company ("United"), an exempt public utility holding company, and the Official Committee of Bondholders ("Bondholders Committee") in the bankruptcy proceeding.¹ Under the terms of the First Stipulation, CL&P and United agreed to make monthly advances ("First Advances") to the disbursing agent for Seabrook in an aggregate amount not to exceed \$15 million outstanding at any one time ("First Commitment"). As of July 1, 1992, the aggregate outstanding principal amount of First Advances was \$9,545,752. CL&P's share of such First Advances was \$3,818,301.

First Advances have been used to pay EUA Power's share of Seabrook expenses, and certain other related expenses, as needed to the extent not covered by EUA Power's revenues from energy or capacity sales, and to protect the investment of CL&P and United in Seabrook by insuring uninterrupted operation. By its terms, the First Stipulation expires on August 23, 1992, unless extended for an additional six-month period.²

EUA Power has entered into a July 1992 Stipulation and Consent Order ("Second Stipulation") with CL&P, United and the Bondholders Committee.

¹ The First Stipulation was approved by the United States Bankruptcy Court, District of New Hampshire ("Bankruptcy Court") on August 29, 1991.

² On or before August 23, 1992, CL&P and United expect to sell to Shearson Lehman Brothers, for an amount equal to the face value of First Advances plus accrued interest thereon, all of their rights with respect to First Advances made to EUA Power.

¹ Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

Under the Second Stipulation, CL&P and United, and, subject to further Commission authorization, additional joint owners of Seabrook ("Joint Owners") will make monthly advances ("Second Advances") to the Seabrook disbursing agent in an aggregate amount not to exceed \$22 million outstanding at any one time ("Second commitment"). Initially, the participation of CL&P and United under the Second Stipulation will be 60% and 40%, respectively. The obligations of the Joint Owners under the Second Stipulation are several and will not exceed such Joint Owner's proportionate share of the aggregate Second Commitment.

The applicants request authorization through February 28, 1994, for: (1) CL&P to make Second Advances pursuant to the Second Stipulation in an aggregate amount not to exceed \$13.2 million outstanding at any one time; and (2) EUA Power to be the beneficiary of Second Advances by United and CL&P in an aggregate amount not to exceed \$22 million outstanding at any one time. The Second Stipulation will not become effective and no advances will be made thereunder until the Bankruptcy Court authorizes EUA Power to enter into a plan of reorganization financing facility ("POR Facility") and certain other events have occurred. Second Advances will be used by EUA Power to pay all outstanding First Advances, and to pay EUA Power's share of Seabrook expenses, and certain other related expenses, including expenses for documenting and securing approval for the Second Stipulation and for the POR facility, as needed to the extent not covered by EUA Power's revenues from energy or capacity sales, and to protect the investment of CL&P and United in Seabrook by insuring uninterrupted operation.

EUA Power will repay all Second Advances, interest, fees, expenses and other obligations under the Second Stipulation no later than 360 days after the date of the first Second Advance (unless such date is extended upon the written consent of all participating Joint Owners) or earlier upon the occurrence of certain events described in the Second Stipulation. All Second Advances will bear interest at a rate per annum equal to the sum of the base rate of the First National Bank of Boston, as in effect from time to time, plus 7 percent per annum ("Effective Interest Rate").

In the interim, the applicants request authorization through August 31, 1993; (1) For CL&P to make and EUA Power to

receive advances ("Continued Advances"), subject to the terms of the First Stipulation, on a month-to-month basis; (2) for EUA Power to use proceeds of such Continued Advances to repay First Advances; and (3) to increase the First Commitment to \$22,000,000 ("Increased Commitment"). CL&P's share of the Increased Commitment will be \$8.8 million. CL&P and United may adjust their shares of the Increased Commitment to 60% and 40%, respectively. In such event, CL&P's share of the Increased Commitment would be \$13,200,000. Once the Second Stipulation becomes effective, Continued Advances made on and after August 23, 1992 will be deemed to have been made pursuant to the Second Stipulation. EUA Power will repay all such Continued Advances, interest, fees, expenses and other obligations no later than the date upon which the Second Stipulation becomes effective, or earlier upon the occurrence of certain events described in the First Stipulation. All Continued Advances will also bear interest at the Effective Interest Rate.

Except as otherwise provided in the First Stipulation or Second Stipulation, the applicants anticipate that EUA Power's obligations to reimburse the advances and to pay interest, costs and expenses will be secured by a lien on all property of EUA Power's bankruptcy estate. The lien will rank prior to all other liens and, except as otherwise provided in the First Stipulation or Second Stipulation, will be given payment priority over any and all other claims, including administrative expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18586 Filed 7-31-92; 3:45 pm]

BILLING CODE 6010-01-M

DEPARTMENT OF STATE

[Public Notice 1666]

Working Groups on U.S. Input to International Telecommunication Union Regional Development Conference for the Arab States (AR-RDC); Meeting

The Department of State/CIP and the Department of Commerce/NTIA announce the initial meeting of the Working Group for the drafting of U.S. input to the International

Telecommunication Union (ITU) Development Conference for the (AR-RDC) will be held on Monday, August 17, 1992, from 1:30 p.m. to 3 p.m. in room 5320, Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The ITU AR-RDC is scheduled for October 25–October 29, 1992, in Cairo, Egypt. The U.S. Working Group will address concerns and issues of the Conference's four main committees.

Committee 1—Role of telecommunications, policy, corporate strategy, plans and management issues.

Committee 2—Investment considerations, financial strategies, and international cooperation.

Committee 3—Network harmonization and new services.

Committee 4—Human resources management and development.

Any U.S. documents prepared for this Conference will be drafted by the Working Group. The purpose of this initial meeting will be to identify those persons interested in participating in the Working Group, to formulate the anticipated output from the Working Group, and to discuss other items on the pre-Conference agenda.

The meeting will be chaired by both the Bureau of International Communications and Information Policy (CIP), U.S. Department of State and the National Telecommunications and Information Administration (NTIA).

Members of the general public may attend the meeting and join the formation of the Working Group. In that regard, entrance to the Department of State building is controlled and individual passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting.

Prior to the meeting, persons who plan to attend should so advise the office of Ms. Nedra Huggins-Williams, Room 5310-CIP, Department of State, Washington, DC 20520; telephone (202) 647-5230. Each attendee must provide their name, title, company name, social security number, and date of birth. All attendees must use the "C" street entrance to the building.

Dated: July 29, 1992.

Nedra Huggins-Williams,
Counselor, Bureau of International Communications and Information Policy

[FR Doc. 92-18379 Filed 8-3-92; 8:45 am]

BILLING CODE 4710-45-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Advisory Circular: Type Certification—Fixed-Wing Gliders (Sailplanes), Including Powered Gliders**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, which provides information and guidance concerning acceptable means of showing compliance with § 21.17(b) of part 21 of the Federal Aviation Regulations (FAR) for type certification of gliders and powered gliders.

DATES: Comments must be received on or before October 5, 1992.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Julea Bell, Standards Staff (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under "FOR FURTHER INFORMATION CONTACT."

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 21.17-2A and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), room 1544, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

On April 13, 1987, part 21 of the FAR was amended to provide procedures for the type certification and airworthiness certification of special classes of aircraft. Special classes of aircraft include gliders and powered gliders,

airships, and other kinds of aircraft that would be eligible for a standard airworthiness certificate, but for which no airworthiness standards have as yet been established as a separate part of chapter 1, subchapter C, Code of Federal Regulations (CFR) 14. Airworthiness standards for these special classes of aircraft are designated in § 21.17(b). Accordingly, the FAA is proposing and requesting comments on AC 21.17-2A, which will provide an acceptable means of showing compliance with § 21.17(b) of part 21 of the FAR for type certification of gliders and powered gliders.

Issued in Kansas City, Missouri, July 27, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18407 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

Proposed Advisory Circular (AC) 25-9A, Smoke Detection, Penetration, and Evacuation Tests and Related Flight Manual Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Proposed Advisory Circular (AC) 25-9A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides guidelines for the conduct of certification tests relating to smoke detection, penetration, and evacuation, and evaluation of related Airplane Flight Manual (AFM) procedures. This notice is necessary to give all interested persons an opportunity to present their views on the proposed revised AC.

DATES: Comments must be received on or before December 4, 1992.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Regulations Branch, ANM-114, at the address above, telephone (206) 227-2127.

SUPPLEMENTARY INFORMATION:**Comments Invited**

A copy of the revised draft AC may be obtained by contacting the person

named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the subject of the AC and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

This AC addresses the following issues:

(a) Clarification of certain paragraphs as recommended by the National Academy of Sciences (NAS) study, 1986.

(b) Addition of Part 25, Amendment 25-72, § 25.869: Fire Protection: Systems, effective July 20, 1990.

(c) Addition of Part 25, Amendment 25-74, § 25.854: Lavatory Fire Protection, effective May 16, 1991.

(d) Addition of crew rest area smoke detection certification tests.

(e) Status of FAA research program on enhanced emergency smoke venting.

(f) Helium smoke generators as test equipment.

(g) Evacuation of continuously generated smoke in cockpits.

In lieu of the methods specified in this AC, the applicant may elect to follow an alternate method provided the alternate method is also found by the FAA to be an acceptable means of complying with the applicable portions of Parts 25 and 121 of the FAR.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-18406 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program, Cheyenne Airport, Cheyenne, WY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Airport Manager of the Cheyenne Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in

recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980).

On January 24, 1992, the FAA determined that the noise exposure maps submitted by the Airport Manager under part 150 were in compliance with applicable requirements. On July 6, 1992, the Assistant Administrator for Airports approved the Cheyenne Airport noise compatibility program. All of the program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Cheyenne Airport noise compatibility program is July 6, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM-611; 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Cheyenne Airport, effective July 6, 1992. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land

uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Denver, Colorado.

The Airport Manager of the Cheyenne Airport submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at the Cheyenne Airport. The Cheyenne Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 24, 1992. Notice of this determination was published in the Federal Register on February 4, 1992.

The Cheyenne Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the

program on January 24, 1992 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective July 6, 1992. Outright approval was granted for all program elements.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on July 6, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Cheyenne Airport.

Issued in Renton, Washington, on July 16, 1992.

Cecil C. Wagner,

Acting Manager, Airports Division,
Northwest Mountain Region.

[FR Doc. 92-18410 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Billings, Montana; Notice of Closing

Notice is hereby given that on or about August 21, 1992, the flight service station at Billings, Montana, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Great Falls, Montana. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on July 20, 1992.

Frederick M. Isaac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 92-18409 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Magnet Secondary School Grant Program; Solicitation

AGENCY: Federal Aviation Administration, DOT.

ACTION: This notice cancels and supersedes notice No. 131, notice of solicitation for Aviation Magnet Secondary School grant applications, published at 57 FR 30298 (July 8, 1992).

Summary

This solicitation announces the availability of federal financial assistance in the Federal Aviation Administration (FAA) Aviation Magnet Secondary School Grant Program, and invites applications for such assistance. The FAA is authorized by section 317 of the Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, and Senate Report No. 102-148 to solicit competitive applications for aviation magnet school grants in favor of public secondary schools to assist aviation magnet activities. This is program No. 20.108 in the Catalog of Federal Domestic Assistance.

Applications must be submitted on behalf of aviation magnet secondary schools by a local educational agency (LEA) that is authorized under state and local law to apply for and accept federal financial assistance for such schools.

This program is intended to provide seed money to help develop and expand aviation education opportunities. The FAA expects to award grants in favor of a maximum of four (4) aviation magnet secondary schools in the United States, its territories, and possessions. A total of \$80,000 is available for grant awards through September 30, 1992. Successful applicants will be required to provide funds to match federal financial assistance dollar for dollar. In no event shall the total federal share (from all federal sources) of any assisted activities exceed 50% of the total allowable cost.

Grant funds may be used only for the direct and indirect costs of acquiring equipment, books, and other instructional supplies to be used in the actual teaching of an aviation curriculum.

Applications will need to distinguish between current aviation magnet activities, and activities that would be added using FAA (and other federal, if any) grant funds together with local matching funds. A panel of federal officials will review, evaluate, and rank competitively each application against the evaluation criteria listed in this notice. The panel will make recommendations for grant awards to the FAA Administrator. The Administrator will make the final determination of grant awards in this discretion.

Any award may range from \$10,000 to \$80,000. The FAA does not necessarily intend to fund all proposed activities. FAA reserves the right to make no award if it deems all applications to be insufficiently meritorious.

Submit Application To: Phillip S. Woodruff, Director of Aviation Education, Federal Aviation Administration Headquarters, APA-100, room 907B, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267-3476.

Closing Date

FAA must receive an original and two copies of the application no later than 4 p.m. EDT on September 4, 1992, the closing date. Applications received after that time (except as provided in the following paragraph) will not be considered. Supplemental material received after the closing date will not be considered unless it has been requested by the FAA.

Applications Submitted by Mail

A mailed application must be sent to the address shown above. An application that is mailed by U.S. Postal Service certified or registered mail at least five (5) days before the closing date, or mailed by U.S. Postal Service express mail at least two (2) federal working days prior to the closing date, will be considered timely even if received after the closing date.

Applications Submitted by Messenger

A hand-delivered application must be carried to the Office of the Director of Aviation Education at the address shown above. This office will accept hand-delivered applications between the hours of 8 a.m. and 4 p.m. EDT, except on weekends and federal holidays.

A confirmation of receipt of each timely application will be sent to the applicant. Notice of rejection for lateness will be sent to late applicants.

Background

The FAA is engaged in a comprehensive program to modernize the Nation's air transportation system to meet the challenge of aviation growth in the coming decades. The modernization program takes advantage of current technological advances to increase the capacity of the Nation's air transportation system while reducing relative costs to the Nation's taxpayers. The FAA recognizes the increasing complexity of technical and managerial skills that will be needed to accommodate the technological advances in systems being planned and implemented throughout the aviation industry. FAA further recognizes that our educational system will play a

critical role in preparing persons for careers in this advanced technological environment. For these reasons, FAA supports the development of aviation magnet secondary schools.

The FAA sponsors the Aviation Magnet Secondary School Grant Program to help assure that future aviation needs will be adequately met and to help assure that aviation education opportunities will be available to minority students at the secondary school level.

Aviation Magnet Secondary School Grant Program

Definitions

An LEA is:

(1) A public board of education or other public authority legally constituted within a State for the administrative control of or direction of, or to perform service functions for, public secondary schools in:

(a) A city, county, township, school district, or other political subdivision of a State; or

(b) A combination of school districts or counties a State recognizes as an administrative agency for its public secondary schools; or

(2) Any other public institution or agency that has administrative control and direction of a public secondary school.

A secondary school is a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Administrator may determine with respect to that State whether such education includes that beyond the twelfth grade.

A magnet secondary school is a secondary school that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds. An aviation magnet secondary school is a magnet secondary school offering a special curriculum in aviation.

Special curriculum means a course of study involving subject matter or a teaching methodology that is not generally offered in the LEA containing the magnet school, to students of the same age or grade level as the students to whom the special curriculum is offered in the magnet school. This term does not include a course of study or a part of a course study—

(1) That is designed solely to provide basic educational services to students who are handicapped or who have limited English-speaking ability;

(2) In which any student is unable to anticipate because of his or her limited

English-speaking ability or limited financial resources; or

(3) That fails to provide for a participating student's meeting the requirements for completing secondary education in the same period as other students enrolled in the LEA's schools.

Authority and Scope

Section 317 of the Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, and Senate Report No. 102-148 authorize this grant program. This is Program No. 20.108 in the Catalog of Federal Domestic Assistance. A total of \$80,000 is available for this program for grant awards through September 30, 1992. No funds have been authorized for subsequent awards. Grant funds may be used only for the allowable direct and indirect costs of acquiring equipment, books, and other instructional supplies to be used in actual teaching, to the extent that such items are in direct support of aviation magnet activities. The FAA expects to award grants in favor of a maximum of four (4) aviation magnet schools in the United States, its territories, and possessions. Individual awards may range from \$10,000 to \$80,000. In no event shall the total federal share of any program exceed 50% of the total allowable cost of the program.

Aviation magnet activities that are assisted by FAA grants will be subject to applicable federal regulations and directives, including but not limited to—

(1) Office of Management and Budget (OMB) Circulars:

(a) A-87, Cost Principles for State and Local Governments;

(b) A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments; and

(c) A-128, Audits of State and Local Governments.

(2) Executive Order 12549 of February 18, 1986, Debarment and Suspension (3 CFR 189 (1987)); and

(3) Department of Transportation Regulations:

(a) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR part 18);

(b) Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964 (49 CFR part 21); and

(c) Governmentwide Debarment and Suspension (nonprocurement) and Government Requirements for Drug-Free Workplace (Grants) (49 CFR part 29).

Eligibility

Eligible schools must be aviation magnet schools that are accredited secondary schools in the United States, or its territories or possessions.

Application Format and Content

Applications must contain the following information in the following order:

1. Applicants

Applications must be submitted on behalf of aviation magnet secondary schools by the LEA that is authorized under state and local law to apply for and accept federal financial assistance for such schools.

The LEA should state whether grant payment should be made to the LEA, directly to the participating school, or to another public entity for the account of such school.

2. Cover Sheet

Type the title "Aviation Magnet Secondary School Grant Application" near the top of the cover sheet. Type the legal name, address, and IRS employer identification number of the LEA, of the participating school, and, if required, of any other public entity to which grant payments to be made for the account of the participating school should be directed. Type the name, title, telephone number, and FAX number of the official authorized to execute a grant agreement in favor of the proposed participating school in the lower left corner of the cover sheet. Also type, in the lower right corner of the cover sheet, the name, title, telephone number and FAX number of the authorized official at the participating school who will be responsible for managing the proposed grant-assisted activities at the school. This person should be referred to as the "activity director." The cover sheet of one copy of the application must bear the original signatures of the above individuals and the dates of those signatures. The signatures of those authorized individuals signify respective institutional endorsement of the application, cognizance of the eligibility requirements, and a commitment to provide specific support, including meeting fiscal obligations, for the proposed activities in the event that the grant is made.

3. Standard Form 424

Applicants must submit Standard Form 424 (Rev. 4-88), Application for Federal Assistance, with each grant application. This form may be obtained by telephoning or writing to the FAA Director of Aviation Education at the

address listed above. Any application lacking this form will be rejected.

4. Table of Contents

Include a table of contents with page numbers.

5. Summary

Include a concise summary of the proposed activities to be funded with FAA grant funds (and other federal assistance, if any), and local matching funds. State the goals and objectives, and the long-range benefits of the program. State the associated costs including cost-sharing figures (see Budget Plan, below). The reader should be able to identify quickly the nature of the program and the requested funding level. The summary should not exceed two (2) double-spaced typewritten pages.

6. Narrative

The narrative should be clearly written and not exceed ten (10) double-spaced typewritten pages. It must contain the following:

(a) *Introduction.* Present a brief description of the school, including: historical background, full-time student enrollment, study body profile, type of location (rural, urban, etc.), fields of emphasis, and status as an aviation magnet secondary school.

(b) *Background.* Describe the evolution of the school's involvement as an aviation magnet school. Provide information and statistics on the occupational areas that aviation graduates are expected to be entering within the aviation industry and the FAA. Provide the following information in an easy-to-read chart format:

(1) Partnerships with government, education, industry: describe any financial and non-financial partnerships at the national, regional, state and local levels which support the school's aviation magnet activities.

(2) Describe the school's magnet activities other than aviation, if any, and discuss how they interact with the school's aviation magnet activities.

(3) Include an organization chart to show how the aviation activities and other magnet activities fit into the institutional structure.

(4) Describe school's activities to recruit aviation students, describing minority and female recruitment activities.

(5) Submit an official document showing the aviation courses offered in the 1992-93 academic year and to be offered in the 1992-93 academic year.

Applications lacking the above information will be rejected.

(c) *Strategic plan.* Present a five (5) year strategic plan for the school's aviation magnet activities. Discuss the components of the plan and how the school anticipates achieving the plan's goals and objectives. Justify the plan's feasibility in relation to the work force needs of the aviation industry and FAA, over-all direction of the school, fiscal concerns, etc.

(d) *Activity plan.* Applications will need to distinguish between current aviation magnet activities, and those that would be added with grant funds and matching funds.

Discuss in detail the proposed activity plan with stated goals and objectives. Relate the activity plan to the strategic plan. Applicants may submit photographs or other visual representations that would help the reviewing panel to assess the relative merits of the proposed activities.

(1) Explain how the activities will directly support the course in the required core (if any) and in the areas of concentration at the school.

(2) Explain how the activities will either enhance current aviation courses or support the development of new aviation courses.

(3) Explain how aviation students and other students will directly benefit from the activities.

(4) Present a detailed discussion, from program design to conclusion, of the components of the activity plan and the tasks necessary to bring the activity to a successful conclusion. The activity is considered completed when the measurements discussed under the evaluation plan described in paragraph (h), below, have been applied and analyzed. This should occur within twelve (12) months of the time when the equipment, books, and other supplies have become available to students following a grant award.

(5) Provide a milestone chart for the activity plan.

(6) Identify the sources of non-FAA federal, and non-federal funding. Document the availability of those funds. Provide a letter of commitment, signed by an authorized official, for funds which will be held available and accountable for meeting cost-sharing obligations. Applications lacking this letter will be rejected.

(7) Describe and explain the mechanism that will be used to manage and monitor the progress of the activities in terms of the milestones and budget expenditures.

(e) *Activity personnel plan.* (1) Identify and describe the relevant skills of those individuals who will have major responsibilities for the proposed activities. Indicate the amount of time

each person will be required to devote to these activities.

(2) Discuss the role of the activity director. Provide information showing that the director has appropriate qualifications, well-defined responsibilities, sufficient time, and adequate academic and institutional authority and support to effectively manage the activities.

(3) Discuss the number and qualifications of faculty necessary to adequately carry out the funded activities. Demonstrate the institutional commitment to provide the necessary faculty positions. Indicate whether personnel are current faculty members or must be hired. If the latter, provide a discussion of planned activities to staff the position(s).

(f) *Budget plan.* The application must contain a budget plan that includes a detailed itemization of proposed expenditures associated with the program according to the following categories:

	Direct cost (\$)	
Allowable Expenses		
(a) Equipment		
(b) Books		
(c) Other instructional Supplies		
Direct Cost		
Indirect Cost		¹@%
Total Cost	\$.....	
Sources:		
(a) FAA Grant	\$.....	
(b) Other Federal Assistance (identify sources)		
Total Federal Assistance		²%
Local Share	%
Total Cost	\$.....	100%

¹ If an indirect cost rate that is applicable to the school at which the proposed activities will be carried out has been negotiated for federal grant purposes by a federal agency and a local authority, enter this rate and attach a copy of the negotiated indirect cost rate agreement. Otherwise enter a proposed rate; it will be subject to adjustment pursuant to negotiation between FAA and the appropriate local authority.

² Shall not exceed 50%.

Equipment means tangible personal property having a useful life of more than one (1) year and an acquisition cost of \$300 or more per unit, except that those organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of \$500 or more per unit and useful life of two (2) years. An organization may use its own definition of equipment, provided that such definition would at least include all tangible personal property.

Personal property means property of any kind except real property. It may be tangible (having physical existence) or

intangible (having no physical existence, such as patents, inventions, and copyrights). *Supplies* means all tangible personal property other than equipment.

Budgets that do not include an itemized list of allowable expenses will be rejected.

(g) *Financial Need.* Provide a detailed justification for the requested grant funding in terms of financial need.

(1) Discuss the consequences of not funding the proposed activities. Explain and identify the funding sources and levels which support the school's current aviation magnet activities.

(2) Indicate the amount of funds over the past three (3) years that have been dedicated to aviation magnet activities.

(3) Provide the same information for funds dedicated to the school's other magnet activities.

(h) *Evaluation plan.* Provide an activity evaluation plan. The plan must include a strategy and measurement component for each goal and objective of activities to be assisted by the grant. The actual evaluation may be performed by the school's staff or in collaboration with outside consultants within twelve (12) months of the time when equipment, books, and other supplies have become available to students following a grant award. The results of the completed evaluation will determine whether the goals and objectives of the activities have been achieved and the effect of the assisted activities upon the overall aviation magnet activities at the school. These results shall be submitted to the FAA as part of the final activity report.

(7) Local Review Statement

Attach a statement, signed by an appropriate official of the LEA, that contains:

(a) An endorsement of the proposed activities;

(b) A description of how the proposed activities support the school's long-range goals and objectives in aviation education; and

(c) A commitment to provide the resources necessary to meet cost-sharing obligations, complete the proposed activities, maintain facilities and equipment at an acceptable level, and provide continuing facilities, materials, and staff support for the aviation magnet program after the grant funds have been expended.

(8) Assurances

Provide assurances that the LEA and the participating school will:

(a) Use funds made available under this assistance program for the purposes specified in this notice;

(b) Employ teachers in the courses of instruction assisted under this assistance program who are certified or licensed by the State to teach the subject matter of the course of instruction;

(c) Not discriminate on the basis of race, religion, color, national origin, sex, or handicap in providing the benefits and services that this assistance program is designed to provide, including but not limited to:

(i) In the hiring, promoting, or assigning of employees of the LEA or other personnel for whom the LEA has any administrative responsibility;

(ii) In admitting to any school for which the LEA has administrative responsibility, or in mandatorily assigning students to such school or to courses of instruction within them, except to carry out an approved desegregation plan, if any; and

(iii) In designing or operating extracurricular activities for students; and

(d) Carry out a high quality education program that will encourage parental decision-making and involvement.

In addition to the assurances listed above, the LEA shall provide such other assurances as the Administrator may determine to be necessary to carry out the provisions of this program. All such assurances will be incorporated in the grant instrument for successful applicants.

(9) Certifications

Applicants are required to submit the following certifications. Certification forms will be provided when Standard Form 424 is requested.

(a) A certification regarding maintaining a drug-free workplace, as required by section 5153(a)(1) of the Drug-Free Workplace Act of 1988, Public Law 100-690, Nov. 18, 1988, 102 Stat. 4181, 4306, 41 U.S.C. 702, and the Department of Transportation Regulations, Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), Subpart F, Drug-Free Workplace Requirements (49 CFR part 29, subpart F). (The form of certification appears in appendix C to subpart F.)

(b) A certification required by Executive Order 12459, *supra*, and Department of Transportation Regulations, Governmentwide Debarment and Suspension (Nonprocurement and Government Requirements for Drug-Free Workplace (Grants), *supra*, regarding debarment and suspension. The form of certification appears at appendix A to 49 CFR part 29. In addition, a successful

applicant will be required, under part 29, to provide to FAA similar certifications to be executed by vendors providing items to the participating school for grant-assisted activities. (The form of certification appears at appendix B to 49 CFR part 29.)

Reporting Requirements

Each participating school shall (a) provide oral project reports to the FAA upon request until the proposed activities have been completed, and (b) shall submit a written annual report to the FAA within ninety (90) days of the close of the school's fiscal year. Each report should include in a summary of activity progress, highlights and accomplishments, personnel changes, and a status report on expenditures and account balances for each of the line items presented in the budget plan.

In addition, a final activity report must be submitted to the FAA within ninety (90) days of the completion of activities. The report should cover accomplishments, results of the implemented evaluation plan, and actual expenditures under the budget plan. (FAA representatives may make site visits to any participating school during the period in which activities are assisted.)

Application Review

A panel of federal officials will review, evaluate, and rank against the evaluation criteria set forth below. The panel will make recommendations for grant awards to the FAA Administrator. The Administrator will make the final determination of grant awards in his discretion.

Any award may range from \$10,000 to \$80,000. The FAA does not necessarily intend to fund all proposed activities. FAA reserves the right to make no award if it deems all applications to be insufficiently meritorious.

Evaluation Criteria

The evaluation criteria are designed to enable the reviewing panel and FAA officials to evaluate effectively the relative merit of the applications submitted. The applications will be scored on a 100-point scale and will be evaluated according to the following factors:

1. Institutional commitment (15 points)

Each application will be evaluated as to the extent of the school's commitment to the proposed aviation magnet activities to be assisted by federal funds, in relation to the curriculum offerings and overall size of activities, as follows:

(a) Number of aviation specialty options.

(b) Number of students eligible to enroll in activities.

(c) Number of graduates anticipated in current year.

(d) Recruitment activities, including outreach programs for minority and female students.

(e) Projected growth of aviation magnet activities over the next five (5) years. Extent to which programmed growth is realistic in comparison to current enrollment figures and strategic plan.

(f) Amount of cost sharing funds provided toward the activities, by year.

(g) Demonstrated continuing support and growth of the school's aviation magnet activities.

(h) Quality of the Local Review Statement.

2. Strategic Plan (15 points)

The feasibility of the strategic plan will be evaluated in terms of the following:

(a) School's current aviation magnet activities.

(b) School's planned approach to meet future aviation work force needs.

(c) Potential resources, including fiscal, instructional, and administrative elements, necessary for achievement of planned goals.

3. Program Plan (20 points)

The program plan will be evaluated as follows:

(a) Appropriateness of the assisted activities in relation to the school's current aviation magnet activities.

(b) Relationship between the assisted activities and the strategic plan.

(c) Number of students to benefit in relation to the size of the school's overall magnet activities.

(d) Benefits to students.

(e) Evidence that the school has good understanding of activities and tasks required to bring activities to conclusion.

(f) Appropriateness of proposed equipment in terms of program goals and objectives.

(g) Extent to which milestones are realistic and attainable.

(h) Extent to which the LEA demonstrates that non-federal funds required for the activities are available.

(i) Extent of administration and technical direction of the activities.

4. Program Personnel (10 points)

The professional qualifications and experience of the school's personnel and any other key officials who will be

involved in the assisted activities will be evaluated as follows:

(a) Qualifications and experience of the Activity Director.

(b) Qualifications and experience of personnel in relation to the goals and objectives of the activities.

(c) How well the school has scheduled and allocated personnel time to perform duties associated with the activities.

(d) How well aviation magnet personnel responsibilities are defined.

(e) Adequacy of faculty on board to utilize facilities and/or equipment or institutional commitment to provide necessary positions and adequate staffing plan development.

5. Budget Plan (10 points)

The budget plan will be evaluated to verify that: (a) Proposed expenditures are itemized by budget category, and mathematical calculations are correct.

(b) Entries are detailed and consistent with the activity narrative.

(c) Budget figures are appropriate for the goods being procured.

6. Institutional Need (15 points)

Each application will be evaluated to determine the extent to which the LEA has demonstrated the following:

(a) An overall financial need for funding.

(b) Consequences to the beneficiary school's aviation magnet activities if FAA funding is not obtained.

7. Evaluation/Assessment Plan (15 points)

The evaluation/assessment plan will be evaluated to determine the extent to which it demonstrates the following:

(a) The plan is adequately tied to the goals and objectives of the activities.

(b) Strategy and measurement components are appropriate for the stated goals and objectives.

(c) Evaluation will produce information which would be useful to other secondary schools in implementing similar activities.

Issued in Washington, DC, on July 29, 1992.
Phillip S. Woodruff,

Director of Aviation Education, Federal Aviation Administration.

[FR Doc. 92-18413 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Tallahassee Regional Airport, Tallahassee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Tallahassee Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Wilson, Acting Director of Aviation, City of Tallahassee, at the following address: Aviation Department, 3300 Capital Circle SW, Suite 1, Tallahassee, FL 32310.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Tallahassee, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Maeda, Airports Plans & Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive Suite 130, Orlando, Florida 32827-5397. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Tallahassee Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 23, 1992, the FAA determined that the application to impose a PFC submitted by the City of Tallahassee was substantially complete within the requirements of § 158.25 of part 158. The FAA will improve or disapprove the application, in whole or in part, no later than November 12, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: January 1, 1993.

Proposed charge expiration date: April 30, 1999.

Total estimated PFC revenue: \$9,645,542.00

Brief description of proposed project(s):

Overlay Runway 9/27 & Taxiway

Upgrade Runway 9/27 Taxiway Lighting
Construct Perimeter Security Fence
Construct Security Access System
Acquire Criswell Property (6.85 acres)
Update Airport Master Plan
Noise Compatibility Study
Construct Cover Walkway and Handicap Ramp
Various Terminal Public Area Projects/Disability Act
Relocate ASR Radar Site
Purchase Quick Response Vehicle
Overlay Runway 18/36 and Taxiway and Associated Projects
Construct New 10,000 sq. ft.-ARFF Building
Construct Access and Service Road, East, South, & West of R/W 9/27
Overlay Old Terminal Ramp for GA
Purchase 3,000 gallons ARFF Vehicle
Construct ARFF Training Facility
Overlay South Apron
Construct Taxiway for T-Hanger Access
Install MLS/CAT II ILS
Expand Cargo Apron
Expansion of Airline Terminal Apron
Add parallel taxiway and connector to Runway 9/27 and Taxiway P, east of terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Tallahassee.

Issued in Atlanta, Georgia, on July 23, 1992.

Dell T. Jernigan,

Acting Manager, Airports Division, Southern Region.

[FR Doc. 92-18449 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amended FEIS notice.

SUMMARY: The FHWA is issuing this Notice to advise the public that comments on the Final Environmental Impact Statement (EIS No. 920134) for CA-710/Long Beach Freeway Construction, 1-10/San Bernardino Freeway to 1-210/Foothill Freeway, will be accepted beyond the initially-announced due date. Public comments

on the FEIS will be accepted until after the Mitigation Advisory Committee submits their initial Status Report to FHWA. It is anticipated that this will take place by the end of the current calendar year, at which time additional notice will be given 30 days prior to the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. James Bednar, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1310.

SUPPLEMENTARY INFORMATION: The Final EIS for Route 710 identifies the Meridian Variation Alignment as the preferred alternative. The FHWA approved the Final EIS as adequate for public disclosure of information on the preferred alternative regarding potential impacts and proposed mitigation as required by the National Environmental Policy Act (NEPA). However, because of the controversy surrounding the project and the magnitude of the impacts relating to potential community disruption, residential relocation, business dislocation, and harm to cultural resources, the FHWA has not approved the final project concept and location for the preferred alternative. The FHWA will not consider approving the project concept and location or issuing a Record of Decision until after the recommendations of the Mitigation Committee are developed and considered for the preferred alternative.

The Mitigation Committee is being established to develop more comprehensive mitigation and enhancement measures to reduce further the impacts of the project. It will focus its efforts on both the mitigation and enhancement measures mentioned in the Final EIS and on the identification and development of appropriate additional mitigation and enhancement opportunities which will minimize the facility's "footprint" through the environmentally and historically sensitive areas the project traverses.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 29, 1992.

Douglas Bennett,

Senior Area Engineer, Sacramento, California.

[FR Doc. 92-18368 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement To Support National Child Passenger Protection Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of discretionary cooperative agreement to support the National Child Passenger Safety Program.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of a discretionary cooperative agreement to support the national child passenger protection program in the area of program demonstration and technical support for pediatricians. This notice solicits applications from national, non-profit pediatric or pediatric practitioner associations that are interested in performing these program development and support activities.

DATES: Applications must be received at the office designated below on or before September 3, 1992.

ADDRESSES: Applications should reference procurement number DTNH22-92-Y-05362 and must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), 400 7th St., SW., room 5301, Washington, DC 20590, attention: Alberta Jones.

FOR FURTHER INFORMATION CONTACT: Questions related to this cooperative agreement should be directed to Ms. Susan Gorcowski, Chief, National Organizations Division, NHTSA, room 5118 (NTS-11), 400 7th St., SW., Washington, DC 20590. (202 366-2712).

SUPPLEMENTARY INFORMATION:

Background

NHTSA estimates that child safety seats, when correctly used, can reduce fatalities among children less than five years of age by 71 percent. This makes child safety seats one of the single most effective automobile safety innovations ever developed. As a result of improvements in the design of these seats, state child passenger protection laws, and public education, the use of child restraints has increased dramatically over the past decade. A survey of locations in 19 U.S. cities indicates that the use rate has increased from 22 percent in 1982 to 84 percent in 1991.

However, despite the apparent high rate of use, child safety seats are currently saving only about half of the lives that they could potentially save.

Many children are still travelling unrestrained, and many who are using child safety seats are using them incorrectly. Recent surveys indicate that about one in four safety seats is being grossly misused, substantially reducing its effectiveness, and as many as three out of four seats are being misused to some extent.

Parents receive information and guidance concerning child passenger protection from many sources. One of the most effective sources for this communication is through the health care community and especially through local pediatricians. Pediatricians and pediatric practitioners have unique credibility and influence with parents of young children. The child passenger protection message benefits from being delivered in the context of a health care activity such as a visit to the pediatrician's office. To many parents, the pediatrician is viewed as the ultimate authority in child health care.

Further, pediatricians have traditionally been respected as a community advocate for the health and well-being of children. This community status enables the pediatrician to increase the awareness of child safety issues among other community leaders such as city government officials and law enforcement personnel. This influence can be of great benefit in community efforts to initiate child passenger protection efforts.

For these reasons, NHTSA intends to establish a cooperative agreement with a national non-profit pediatric or pediatric practitioner association for the purpose of supporting and initiating child passenger safety educational activity among pediatricians or practitioners nationwide.

Objectives

Specific objectives of this cooperative agreement are as follows:

1. To produce and distribute a quarterly publication to provide a technical update concerning issues related to the protection of child passengers. This publication will address technical issues pertaining to recent research in the field of child passenger protection. Specifically, the technical update will cover issues concerning the crash performance of various restraint options and conditions, new products and services pertaining to the protection of child passengers or to the promotion of child passenger protection, issues concerning child passenger safety legislation at the state and federal level, significant events involving the promotion of child passenger protection at the state and

federal level, and other issues which are within the interest of child passenger protection advocates across the country.

Each quarterly technical update will consist of at least eight pages of relevant information, with appropriate illustrations and photographs, printed in at least two colors on glossy eight and one-half by eleven inch paper. The update will be delivered to a national audience of approximately 5,000 child passenger protection advocates, including health care professionals, traffic safety professionals and others. This mailing shall include but not be limited to a list provided by NHTSA.

2. To develop, promote, demonstrate, monitor, and evaluate a number of concurrent community or state-based child passenger safety demonstration projects in locations across the country. These projects should go to the state and/or local affiliates of the organization and involve direct participation by pediatricians or pediatric practitioners, with the intent of demonstrating innovative or known effective programs for utilizing the community or state influence of the pediatrician or practitioner in improving the protection of child passengers.

NHTSA anticipates that this activity will require development and administration of a sub-grant program which is promoted among pediatricians or pediatric practitioners nationwide. The agency requires that at least fifteen such community or state programs be conducted and evaluated under this cooperative agreement. These programs should be conducted in a variety of community or state types with sufficient urban-rural, socio-economic, and geographic differences to produce useful demonstrations of generalizable child passenger protection programs.

Each of these state or community demonstration projects should involve substantial participation of pediatricians and/or practitioners in the promotion of child passenger safety through some combination of contact and consultation with parents, state or local law enforcement officials, legislators, media representatives and business or civic groups. The specific design, objectives and operation of these projects should be decided by the participating pediatricians or practitioners. However, each project should have a complete program plan, including predetermined and measurable objectives, labor and materials budgets, specific personnel plans with commitments from listed participants, and a monitoring and evaluation plan. States in which awards are made must demonstrate through written documentation that they have

coordinated their project plan with the Governor's Highway Safety Office.

3. To produce and distribute an informative and promotional compendium of demonstration program results to be used to encourage and facilitate other pediatricians and pediatric practitioners in adopting similar projects. This compendium should accurately review the activities, accomplishments, and known community or state impact of each of the demonstration projects.

The compendium should address specific barriers which were encountered in these projects and strategies which were pursued to overcome these barriers. The compendium should be produced in an attractive format with appropriate layout, illustrations, photographs and other features to stimulate reader interest in these projects.

4. To promote widespread adoption of child passenger safety activities among pediatricians and pediatric practitioners by means of distributing the compendium of demonstration project results and by other methods. Examples of other methods to be considered include presentation at national meetings and nationwide media coverage.

Deliverables

A final list of required deliverables will be developed in accordance with the accepted proposal prior to award. For planning purposes, the agency anticipates that the required deliverables will include the following:

Deliverable	Date
Technical Update:	
Draft Copies	2 months, 5 months, 8 months, and 11 months after award.
Final Copies	3 months, 6 months, 9 months and 12 months after award.
Demonstration Projects:	
Project Proposals	2 months after award.
Demonstration Compendium	10 months after award.
Demonstration Promotion Plan	9 months after award.
Progress Reports	Quarterly.
Final Report	13 months after award.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement, an organization must meet the following requirements:

- Be a private, national non-profit organization;
- Have an established membership structure with state/local chapters or affiliates in all regions of the country;

- Have a membership consisting exclusively, or in large part, of pediatricians or pediatric practitioners,
- Have in place a schedule of annual regional/state conferences or conventions and a variety of communications mechanisms that are appropriate for motivating members and other constituents to become involved in the promotion of occupant protection at state and local levels;
- Demonstrate an understanding of the current and potential role of the membership in occupant protection efforts at the state and local levels; and,
- Demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership.

NHTSA Role in Activities

The NHTSA Office of Occupant Protection (OOP) will be involved in all activities undertaken as part of this cooperative agreement program and will:

- Provide a project officer to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and OOP;
- Make available information and technical assistance from government sources, within resources available and as determined appropriate by the project officer; and,
- Provide liaison with other government and private agencies as appropriate.

Evaluation Criteria and Review Process

Proposals must demonstrate that the applicant meets all eligibility requirements listed above. Proposals will be evaluated based upon the following factors which are listed in descending order of importance:

1. What the organization proposes to accomplish and the potential of the proposed project to make a significant contribution to national efforts to increase the correct use of child safety seats.
2. The extent to which the project addresses foreseeable barriers to gaining widespread adoption of child passenger safety activities by pediatricians and/or pediatric practitioners. These barriers include awareness, motivation, instruction, and personnel and financial limitations.
3. The overall experience, capability and commitment of the organization to facilitate involvement of its membership in the promotion of child passenger protection.
4. The soundness and feasibility of the proposed approach or workplan.

including the evaluation to assess program outcomes.

5. How the organization will provide the administrative capability and staff expertise necessary to complete the proposed project.

6. The proposed coordination with and use of other available resources, such as existing or planned state and community occupant protection programs and other sources of financial support.

Upon receipt of applications by the agency, they will be screened to assure that all eligibility requirements have been met. Applications will be reviewed by NHTSA staff using the criteria outlined above. The results of this review will be recommendations to the agency management for Cooperative Agreement award.

Support, Terms and Conditions

Contingent on the availability of funds, satisfactory performance, and continued demonstrated need, this cooperative agreement may be awarded for a project period of up to three years. The application for the initial funding period (12 months) should address what is proposed and can be accomplished during that initial period. The proposal for the initial period should not include any continuation information, but should cover only the first 12 months of effort. To obtain funding after the initial 12-month period, a continuation application and approval will be required for any subsequent year. Continuation applications will not be subjected to competitive review, but must demonstrate that the continuation effort will effectively and efficiently fulfill program objectives.

Anticipated funding level for the FY 92 cooperative agreement is \$99,000.00. Subsequent years may be funded pending the availability of funds, demonstrated need and satisfactory performance. Federal funds should be viewed as seed money to assist organizations in the development of traffic safety initiatives. Monies allocated in this cooperative agreement are not intended to cover all of the costs that will be incurred in completing the project. Applicants should demonstrate a commitment of financial and in-kind resources to the support of the proposed project.

The organization participating in this cooperative agreement program may use awarded funds to support salaries of individuals assigned to the project, the development or purchase of direct program materials, direct program-related activities, or for travel related to the cooperative agreement.

The award recipient will be required to submit quarterly progress reports in a format and on a schedule to be determined after award. In addition, the recipient will be required to submit a detailed final summary report describing the project and its outcomes no later than 90 days after termination of the period of support.

Application Procedure

1. All applications must be covered by a signed copy of OMB Standard Form 424 (revised 4/88, including 424A and 424B) "Application for Federal Assistance" with the required information filled in and the certified assurances included. This form is available from the NHTSA Office of Contracts and Procurement (NAD-30), 400 Seventh St., SW., Washington, DC., 20590, (202) 366-0607.

2. Applications shall include a program narrative statement which addresses the following:

a. Goals and Objectives

(i) Demonstrates the need for the assistance and states the principle and subordinate objectives of the project. Supporting documentation from concerned interests other than the applicant can be used. Any relevant data based on planning studies should be included or footnoted.

(ii) Identifies the results and benefits to be derived.

b. Approach

(i) Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished. Include the reasons for taking this approach as opposed to other approaches.

(ii) Describes any unusual features, such as design or technological innovations and extraordinary social/community involvement.

(iii) Provides quantitative projections of the accomplishments to be achieved, if possible, or lists the activities in chronological order to show the schedule of accomplishments and their target dates.

(iv) Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results. Explains the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

(v) Lists each organization, corporation, consultant, or other individual who will work on the project along with a short description of the nature of their effort or contribution and relevant experience.

3. Applications must be typed on one side of the page only. The original and two copies of each application must be submitted. An applicant may submit an additional four copies to facilitate the review process, but there is no requirement or obligation to do so.

Administration of the Cooperative Agreement

During the effective period of the cooperative agreement awarded as a result of this notice, the agreements shall be subject to general administrative requirements of OMB Circular A-110 (or the "common rule", if effected prior to the award), the cost principles of OMB Circular A-21 or A-22, as applicable to the recipient, and the provisions of 49 CFR part 29, Governmentwide Debarment and Suspension (nonprocurement).

Michael B. Brownlee,

Associate Administrator, Traffic Safety Programs.

[FR Doc. 92-18418 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 195]

Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101-5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

- (1) For the General Counsel Panel—
 - Dennis I. Foreman, Deputy General Counsel, who shall serve as Chairperson;
 - Russell L. Munk Assistant General Counsel (International Affairs);
 - Kenneth R. Schmalzbach, Assistant General Counsel (Administrative & General Law);
 - Robert M. McNamara, Jr., Assistant General Counsel (Enforcement);
 - Marvin J. Dessler, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms; and
 - Michael T. Schmitz, Chief Counsel, United States Customs Service.
- (2) For the Internal Revenue Service Panel—
 - Chairperson, Deputy Chief Counsel, IRS; Deputy General Counsel; Two Associate Chief Counsel, IRS; and Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Dated: July 28, 1992.

Dennis I. Foreman,

Acting General Counsel.

[FR Doc. 92-18341 Filed 8-3-92; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Application To Restrict Parallel Imports Bearing Genuine Trademarks

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of application to restrict parallel imports bearing genuine trademarks.

SUMMARY: This document seeks comments on an application submitted to prevent the importation of certain goods bearing genuine "Duracell" trademarks under the terms of a district court injunction requiring the U.S. Customs Service to provide protection to trademarks meeting certain criteria.

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Barry P. Miller, Senior Attorney, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., room 2104, Washington, DC 20229 (202-927-0850).

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1992, The United States District Court for the District of Columbia issued an amended order in *Lever Brothers Co. v. United States*, No. 86-3151 (HHG), which enjoined the U.S. Customs Service from allowing the importation of foreign-made goods otherwise admissible under 19 CFR 133.21(c)(2) that bear a trademark identical to a valid United States trademark but which are materially physically different. As a result of this court action and pending further action by a court or final resolution of *Lever Bros. Co. v. United States*, Appeal No. 92-5185, owners of recorded trademarks that are under common ownership or control with foreign companies that use the trademark on foreign-made goods with material physical differences can

now apply to Customs to stop the importation of those foreign-made goods.

In order to receive the protection as outlined by the court, applicants must first show that the trademark owner requesting the protection falls within the scope of § 133.21(c)(2) of the Customs Regulations, as opposed to § 133.21(c)(1). The District Court for the District of Columbia ordered Customs to provide protection only when goods would otherwise be admissible under § 133.21(c)(2), which applies to goods of a foreign trademark owner under common ownership or control with the U.S. trademark owner. Section (c)(1) applies to goods of a foreign trademark owner that also owns the U.S. trademark.

Applicants for protection under the terms of the court order must also show Customs that the foreign affiliate of the U.S. trademark owner uses the mark on goods with material physical differences. For this, applicants must show Customs that the goods are different, and also that the difference is "material". On June 26, 1992, by publication in the *Federal Register* (57 FR 28605), Customs invited trademark owners to notify Customs if they believe that the trademark owner and the goods bearing the trademark meet these criteria.

An application has been submitted pursuant to the June 26, 1992, *Federal Register* notice, for a restriction against the importation of goods bearing genuine "Duracell" trademarks. Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person opposing the application. Notice of the action taken in response to the application will also be published in the *Federal Register*.

Dated: July 27, 1992.

Barry P. Miller,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 92-18363 Filed 8-3-92; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Services

[Dept. Circ. 570, 1991 Rev., Supp. No. 27]

Surety Companies Acceptable on Federal Bonds, Suspension of Authority; Kentucky Central Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Kentucky Central Insurance Company of Lexington, Kentucky, under

the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is hereby suspended effective July 1, 1992. This suspension will remain in effect until further notice.

The Company was last listed as an acceptable surety on Federal bonds at 56 FR 30150, July 1, 1991. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect this suspension.

With respect to any bonds currently in force with Kentucky Central Insurance Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202/FTS) 874-7116.

Dated: July 24, 1992.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 92-18317 Filed 8-3-92; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1991—Rev., Supp. No. 26]

Surety Companies Acceptable on Federal Lands, Termination of Authority; South Carolina Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to South Carolina Insurance Company, of Columbia, South Carolina, under the United States Code, title 31, §§ 9304-9308, to qualify as an acceptable surety on Federal bonds was terminated effective June 30, 1992.

The Company was last listed as an acceptable surety on Federal bonds at 56 FR 30162, July 1, 1992.

With respect to any bonds currently in force with South Carolina Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (FTS/202) 874-7102.

Dated: July 24, 1992.

Diane E. Clark,

Assistant Commissioner, Financial
Information, Financial Management Service.

[FR Doc. 92-18315 Filed 8-3-92; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information
Agency.

ACTION: Notice of reporting
requirements submitted for OMB
review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of Public Law 98-164. USIA is requesting approval for a three-year extension of an information collection entitled "USIA-Supported Educational and Cultural Exchange Activities," under OMB control number 3116-0199. Estimated burden hours per response is forty-five minutes.

DATE: Comments are due on or before September 3, 1992.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Ms. Lin Liu, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of

information is estimated to average forty-five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: USIA-Supported Educational and Cultural Exchange Activities.

Form Number: None.

Abstract: In the interest of sound program management, USIA undertakes the collection of information about program effectiveness necessary to the management and evaluation of USIA-funded educational and cultural exchange programs. USIA seeks clearance for these information collection activities among grantees and alumni/ae of these programs.

Proposed Frequency of Responses:

No. of Respondents 2,000.
Recordkeeping Hours 350.
Total Annual Burden 1,850.

Dated: July 28, 1992.

Rose Royal,

Federal Register Liaison.

[FR Doc. 92-18323 Filed 8-3-92; 8:45 am]

BILLING CODE 8230-01-M

Group Projects for International Visitor Grantees

AGENCY: United States Information
Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency (USIA) announces its intention to award ten grants of approximately \$130,000 each to not-for-profit organizations arranging group projects for International Visitors traveling within the U.S.

DATES: Dates for the programs and deadlines for submission of each proposal are indicated in the individual program descriptions which follow. All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on the due date indicated. Faxed documents will not be accepted, nor will documents postmarked on the due date but

received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the deadline indicated. Grants should begin approximately four weeks prior to the project opening date.

ADDRESSES: The original and 20 copies of the proposal and budget (stapled, not bound), as well as five copies of the application and required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: International Visitor Group Projects, Office of Grants Management, E/XE, room 357, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Mr. Jay Taylor, Chief, Group Projects Division (E/VP), room 255, 301 4th Street SW., Washington, DC 20547; telephone (202) 619-6285, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Overview

Programs are authorized under Public Law 87-256, the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), "to increase mutual understanding between the people of the United States and the people of other countries." Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs must conform to all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Guidelines

Subject to the availability of funds, USIA seeks separate proposals from non-profit organizations for programs for International Visitors traveling throughout the U.S. in seven Multi-Regional group projects, two Regional group projects and one Young African Leaders group project. Each is centered around a different theme. Participants in the projects will be foreign leaders or potential leaders selected by U.S. embassy committees abroad. Each group will consist of approximately 20 foreign visitors in addition to the three or four American escort officers who accompany them.

With the exception of the six-week Young African Leaders Project, each program will be 28 days in length. Most programs should begin in Washington, DC, with an orientation and overview of

the issues and a central examination of federal policies regarding these issues. They would then incorporate visits to at least five or six additional communities in at least three geographical regions. The programs should provide additional opportunities for participants to experience the diversity of American society and culture. At appropriate points in the project, participants may be divided into smaller, five- or six-member teams for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group. Home hospitality and homestays are encouraged. In cities where such councils exist, arrangements for community visits must be made through the National Council for International Visitors (NCIV) and the network of its constituent councils throughout the U.S.

Proposed Budget

Proposals must include a comprehensive line item budget for which specific details are available in the application packet.

Application Procedures

To be eligible for consideration, organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the theme of the project. Organizations with less than four years' experience in international exchange will not be eligible to compete for these grants. Experience in programming exchange visitors is desirable.

Interested organizations should write or call the Group Projects Division (address provided above) to request application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Following are the preliminary project summaries for each project:

Title: U.S. Foreign Policy in a New World.

Type: American Republics Regional [Spanish].

Dates: January 11–February 5, 1993.

Proposal Due: October 19, 1992.

Project Goals:

- To provide a historical perspective of U.S. foreign policy as it developed in the post World War II era;
- To examine the forces of global change that influence the formulation of our foreign policy;
- To highlight the domestic changes that create new opportunities for the change of previous foreign policies;

- To analyze selected current U.S./Latin American regional issues with emphasis on the decision-making process.

Participants: This project is intended for mid level government and elected officials engaged in the formation of foreign policies for their respective countries. It is also intended for analysts of long term trends and leaders of the business and scientific community. Journalists would not be appropriate participants.

Summary: The program will begin in Philadelphia, Pennsylvania, with presentations on the history of U.S. foreign policy, discussions of the federal structure and its impact on the formation of a national foreign policy, and meetings on the influences of commerce, finance, labor, education and the environment on the formation of foreign policies. As the group travels through the United States, they will focus on the changes that have occurred domestically. They will have several opportunities to make presentations of their views of the same types of changes in Latin America and their countries. These presentations will generate discussions with local leaders and among the group members.

The project will end in Washington, DC, where the visitors will discuss the formation of official foreign policy with representatives of the administration, the Congress and with outside analysts. Visitors will be able to discuss bi-lateral issues with officials in the appropriate departments. They will have the opportunity to present their findings and ideas to a round table of experts in the Latin American policy arena. They will have the opportunity to evaluate the project and critique the method of presentation. The participants will be able to take advantage of cultural opportunities in the cities that they visit. In a few locales, the participants will be offered home hospitality with local volunteers.

Title: University Administration in the U.S.

Type: Multi-Regional.

Dates: February 1–26, 1993.

Proposal Due: November 9, 1992.

Project Goals:

- To examine the American system of higher education, its structure, administration and support services;
- To explore the changing needs and responsibilities of higher education and its changing relationship with other elements of society;
- To facilitate discussions on topics of concern such as degree equivalencies, accreditation, student aid, admissions and counseling;

- To provide participants with the opportunity to discuss potential linkages with their U.S. counterparts and promote international cooperation in the field of higher education.

Participants: This project is intended for senior officials of colleges and universities who have institution-wide responsibilities for planning and management of institutions of higher learning.

Summary: This project will provide a comprehensive introduction to university administration at both state and private institutions. The program will begin in Washington, DC, with discussions covering major aspects of university planning and administration as well as the philosophy of U.S. higher education from an historical as well as a contemporary perspective. Meetings will include Department of Education officials and Congressional staff members to discuss the role of the federal government in the U.S. educational system. USIA's Office of Academic Programs as well as the Council on the International Exchange of Scholars (CIES) will also be a part of the Washington program. The agenda will include appointments with representatives of relevant private and professional organizations which may include the American Association for Higher Education, the Academy for Educational Development, the National Association of State Universities and Land Grant Colleges, the American Association of State Colleges and Universities, the American Association of Collegiate Registrars and Admissions Officers, and the American Council on Education. A visit to the Library of Congress will round out the Washington portion of the program.

Beyond Washington, the program will include small team visits to university campuses for a number of days with participants actually staying on or next to the campuses, incorporating meetings with students, administrators, faculty, in states with effective state higher education systems and a wide range of types of institutions of higher education. Host institutions will be asked to focus on a variety of issues related to university administration—e.g. financial support; the participation of faculty and students in university governance; student services (transport, food, dormitories); recruitment of students and faculties; development of work/study and student aid programs; cooperation between the University and the local business community. Visits to community colleges will be included to examine their growing importance in

higher education. Time will be set aside to address the specific concerns of the participants.

Social and cultural events as well as home hospitality will be included throughout the program.

Title: Ethnicity and Pluralism in American Policies.

Type: European Regional.

Dates: February 22–March 20, 1993.

Proposal Due: November 30, 1992.

Project Goals:

- To introduce participants to the rich diversity of American culture, including ethnic, religious, linguistic, and racial groups;
- To demonstrate the influence and essential role of various special interest groups in the American political process;
- To present a discussion of current issues evolving from the American struggle to address and accommodate the demands of a pluralistic and ethnically diverse society.

Participants: This project is intended for government officials, journalists, politicians, academics and others with a professional interest in and responsibility for issues of immigration, ethnicity and assimilation concerns, and the social welfare and political integration of minority groups.

Summary: For many countries in Europe, the ongoing international economic integration brings with it the need to accommodate the special needs and interests of newly-arrived immigrant groups and increasingly diversified populations. The solutions to be sought will affect such diverse areas as social welfare, the movement of labor across borders, national economics, investment, and political power shifts. Throughout its history, the U.S. has faced such challenges and continues to address the dilemma of incorporating into the social and political fabric of the country an ever increasing number of special interest groups. The strength and resilience of the American political system rests in its reliance on a pluralistic structure.

This project will explore the historical, political and cultural bases of American pluralism as well as current issues such as education, social welfare, political activism, and affirmative action. Participants will learn about the efforts of groups to pursue their particular economic, social and political agendas, while maintaining their cultural distinctiveness, and about the political environment that not only allows but encourages and even depends upon them to do so.

The program will open in Washington with an introduction to American

politics, emphasizing the role played by a variety of interest groups in influencing domestic as well as foreign policy. The opening session will provide an academic perspective on American political thought and practice. A specialist in demographics will give an overview of historical immigration and current population trends in the U.S. and their significance in the political process. Participants will then meet with representatives of Congressional committees to discuss legislation such as the Immigration and Naturalization Control Act of 1990; with appropriate officials at the Departments of State, Health and Human Services, Justice and Labor; and with independent agencies such as the U.S. Commission on Civil Rights and the Equal Employment Opportunity Commission. They will also have the opportunity to discuss issues with association representatives, lobbyists and think tank scholars.

Outside Washington, the group's itinerary, reflecting regional balance, will take them to locations across the country in order to demonstrate the practical side of theoretical topics introduced in the nation's capital. They will have the chance to observe and discuss issues of political access and activism related to ethnic, religious, racial and linguistic affiliation. The program will address topics such as the bilingual education/multicultural curriculum debate, grassroots political organizing, the civil rights movement, and immigration and the ethnic composition of communities.

Title: Teaching English as a Second Language.

Type: Multi-Regional.

Dates: March 22–April 16, 1993.

Proposal Due: December 14, 1992.

Project Goals:

- To examine the organization and methodology of Teaching English as a Second Language programs in the United States, especially as they apply to large groups of students;
- To give teachers of English an opportunity to meet with American professional colleagues to discuss current trends and developments in the field;
- To develop a better understanding of the educational system in the U.S. and the linkages between educational institutions and community programs;
- To provide an exposure to the complexity of social, political, economic and demographic dynamics in the U.S.

Participants

This project is designed for government education officials,

directors, and instructors of English language programs.

Summary

This project will expose participants to the organization and methodology of a wide variety of English teaching programs and teacher training programs in the U.S., including bi-lingual programs in elementary and secondary schools, English programs for refugees, college preparatory programs, vocational English as a second language, computer-assisted language learning, adult basic education, TEFL/TESOL programs and applied linguistics. A representative range of issues and institutions will be covered. Participants will observe classes and visit language laboratories. Issues such as curriculum and materials development, testing, innovative class techniques, teaching reading and writing, and English for Special Purposes (ESP) will be examined. In addition, the group will visit the English Language Programs Division at USIA, where a unique series of English-teaching video programs has recently been developed.

Following the Washington, DC, program, participants will travel to various geographic regions of the U.S. to examine well-established and nationally recognized TESOL programs, and meet with educators in communities with bi-lingual educational systems serving ethnically and culturally diverse populations. While the focus of the program will be primarily on TESOL activities, visitors will also be exposed to other elements of the education field in the U.S., including adult and continuing education, programs for special students (such as literacy training and cultural orientation programs for new immigrants), and vocational training programs for non-native speakers of English.

For a more individualized, small group experience, the visitors will be divided into teams at some point during the course of this program. Cities equal in character and size will be visited by each team and similar aspects of the program topic will be covered. In this way, participants will have new experiences to share with their fellow colleagues when the teams are reunited, and they will have the opportunity to compare and contrast how certain subject areas were addressed in these different locations. In addition, each visitor will have opportunities to meet with students in the classroom or with civic or professional groups to talk about their professions, their countries, and their perceptions of the U.S.

Home hospitality invitations with professional colleagues and ordinary Americans will provide informal settings for further discussions of legal and social issues and the American approaches to dealing with them.

The program will conclude in Atlanta, Georgia, with attendance at the 1993 International TESOL Convention, April 13-17, 1993.

Title: Environmental Protection Efforts in the U.S.

Type: Young African Leaders [French/English].

Dates: April 12-May 21, 1993.

Proposal Due: January 11, 1993.

Project Goals:

- To provide an overview of environmental issues in the U.S., including water pollution, air pollution, toxic waste disposal, acid rain, and wilderness management;
- To explore the roles of non-governmental organizations, industry, the academic and research community, private citizens, and government—federal, state, and local—in environmental protection efforts in the U.S.;
- To expose participants to American political culture through the study of environmental issues;
- To explore the relationships between environmental protection and conservation efforts and economic development, at local and national levels;
- To examine U.S.-sponsored efforts of global environmental protection.

Participants: The project is intended for emerging experts on environmental issues. Participants will include government officials, politicians, journalists, academicians, researchers, and industry representatives with a professional interest in environmental protection efforts at national, regional and local levels. Nominees should be between 25 and 35 years of age, and should not have had significant previous U.S. experience.

Summary: The project will be six weeks in length and will consist of six distinct program segments, including an initial week of orientation in Washington, DC; a week of team city visits; a week-long internship with professional counterparts around the country; a week-long university-based seminar; a second week of team city visits, and a final week of synthesis discussion and a final evaluation session.

The program will begin in Washington, DC., with an overview of environmental issue in the U.S. Participants will meet with representatives from government

agencies, the World Bank and other international economic institutions, the Congress, non-governmental organizations, and academic institutions to discuss issues and various approaches to environmental policy formulation and implementation. Discussions will emphasize: The structure and functioning of the American political system including federalism, public/private sector dynamics, and grass-roots involvement; the growing role of the U.S. in global environmental issues and possible environmental solutions for developing countries; and the various scientific, political, economic, cultural, religious, and historical agenda with influence approaches to environmental issues.

The group will travel outside of Washington, DC, to a variety of geographic regions. Issues to be explored may include: The implementation of federal regulations by local jurisdictions; the activities and impact of grassroots organizations; on-site visits to industries; the relationship between energy consumption, life-style, and the environment; environmental protection efforts in the agricultural sector including the issue of pesticides. Environmental issues including global climate and atmospheric change, tropical deforestation, wildlife conservation, and hazardous waste dumping, and the emerging North-South dialogue will be examined. Possible solutions for sustainable development such as agro-forestry, debt-for-nature swaps, and various government incentive policies will also be explored. A visit to a national park or other American wilderness area will be included.

Title: American Studies: Ethnic and Social Diversity in a Democracy.

Type: Multi-Regional.

Dates: May 3-28, 1993.

Proposal Due: February 8, 1993.

Project Goals:

- To update and broaden participants' knowledge and understanding of the United States as a topic for study, writing and research;
- To discuss the latest developments in teaching methods, curriculum design and resources in American Studies in the U.S.;
- To expose participants to various regions of the U.S. and to allow them to observe and partake in America's ethnically and socially diverse culture and society firsthand;
- To provide participants opportunities to exchange information and ideas with each other and with their American professional counterparts.

Participants: This project is intended for professors and teachers of American

Studies, and for commentators and writers interested and involved in the study and teaching of American society and culture.

Summary: This program will provide participants with an opportunity to increase their knowledge of the U.S. as a subject for writing, teaching, and research. As such, the program will include meetings on selected current issues, such as American politics, government and the economy. A special emphasis of these meetings will be on how the U.S. is incorporating its socially and ethnically diverse population in these sectors. Through discussions with professional colleagues, the visitors will learn about the latest developments in curriculum design and examine the diversity of approaches to the teaching of American Studies at both private and publicly supported schools. These discussions will permit a productive exchange of views and will hopefully lead to the establishment of linkages between visiting individuals and institutions.

This project will open in Washington, DC, with discussions designed to introduce participants to American history, society, culture, literature, and educational system. Participants will meet with experts in USIA's Division for the Study of the United States, at area universities, the Smithsonian Institution, the Congressional Research Service, and relevant government agencies to discuss these issues, as well as the U.S. Constitution and roots of U.S. culture.

Beyond Washington, the group will travel to each of the major regions of the U.S. to develop an understanding of the cultural, regional and ethnic diversity of the U.S. Meetings with education officials, teachers, professors of American Studies, writers and publishers of American Studies resource materials, and curriculum designers will introduce participants to up-to-date American Studies teaching methods and resources, including those in the areas of African-American Studies and Women's Studies. Participants will visit several secondary schools and universities around the country to observe well-established programs in American Studies, where they will have opportunities to attend classes and meet with faculty, administrators and students. Through visits to state capitals, participants will be exposed to state and local government, issues, and politics.

Opportunities for participants to attend cultural and social events will be incorporated throughout the month. The program will also emphasize home hospitality in an effort to expose the

grantees to different kinds of American citizens in all regions of the country. Within the context of the program, there will also be an opportunity for each participant to spend two to three days at selected locations doing research in his/her area of specialization or to pursue special interests in other areas not already covered in the program. This aspect of the program will depend on the specific interests of each visitor.

Title: Entrepreneurship in the U.S.

Type: Multi-Regional

Dates: May 17–June 11, 1993

Proposal Due: March 1, 1993

Project Goals:

- To further understanding of the social, economic, and political factors which influence and encourage private enterprise;
- To present the U.S. economy as one developed through equitable access to economic opportunity;
- To provide examples of successful entrepreneurial efforts in the U.S.

Participants: This project is designed for government officials, private business organization or industry representatives, labor leaders, academics, community leaders, and journalists, with an interest in the American free enterprise system.

Summary: This program will enable participants to survey current U.S. economic conditions and factors which influence and encourage private enterprise such as current Administration policies, the influence of labor, immigration, and private/public cooperation, and to assess major controversial economic issues and the implications of those issues for small businesses.

This project should open in Washington DC, with an overview of the structure of American government, the history and philosophy of the American free market system, federal economic policies, and current issues in entrepreneurship and the creation of small businesses. Participants will meet with representatives from the Departments of Commerce and Treasury, Congress, the U.S. Chamber of Commerce, the National Federation of Independent Business, the Small Business Administration, trade associations, and think tanks, to learn about the growing importance of privatization in the U.S. economy. An academic specialist should give the group background on the most recent research on what individual psychological characteristics contribute to successful entrepreneurship and discuss current theories on how to achieve business success. Another specialist will be asked to illustrate the

parallels between greater individual freedom in the market place and increased economic growth. The group should visit one of the many entrepreneurial firms that have sprouted in the suburban capital area during the last decade.

Beyond Washington, the group will observe examples of successful entrepreneurial efforts in various geographic regions, visiting at least one recipient of the 1992 Malcolm Baldrige Award for excellence in American business. Other discussions should explore critically the ways the U.S. federal, state, and local governments attempt to foster the growth of small business, including programs designed to assist women and minority group members getting started in business. The group will visit state-sponsored small business "incubators" to learn more about this example of public/private cooperation. They will discuss with the beneficiaries of such cooperation the growth-promoting state and local programs and tax incentives for small business development that are intended to abet individual entrepreneurial effort, as well as the impact of labor unions and immigration—both legal and illegal—on entrepreneurship. Participants will observe how the rapid growth of high-tech electronic and biotech manufacturing as well as service industries, including consulting organizations, has created opportunities for entrepreneurial endeavor. Since many successful businesses are often an entrepreneur's second, third, or fourth attempt, discussion of failed efforts will also be provided.

For a more individualized, small-group experience, the visitors will be divided into teams at some point during the course of this program. Cities equal in character and size will be visited by each team where similar aspects of the program topic will be covered. In this way, participants will have new experiences to share with their fellow colleagues when the teams are reunited, and they will have the opportunity to compare and contrast how certain subject areas were addressed in these different locations. In addition, all visitors will have opportunities to meet with secondary school students and civic or professional groups to talk about their professions, their countries, and their perceptions of the U.S.

In community visits, the group will observe the role the university plays in developing an infrastructure on which entrepreneurship can flourish, visiting campuses where entrepreneurship is taught. The project will include a regional financial center where participants will meet representatives of

major financial organizations and venture capital firms to learn about venture capital formation and financing alternatives available to entrepreneurs in the U.S. Home hospitality with professionals in the field and ordinary Americans will provide informal settings for further discussions about everyday life, social issues, and the American approaches in dealing with them.

Title: Radio Broadcasting in the U.S.

Type: Multi-Regional.

Dates: June 7–July 2, 1993.

Proposal Due: March 29, 1993.

Project Goals:

- To promote a better understanding of the history, structure and functions of radio broadcasting in the U.S.;
- To examine the role of radio communications in the U.S. in promoting community development and in protecting democratic institutions;
- To review the legal and philosophical commitments to the freedom of expression and the influence of these commitments on U.S. international communication policies.

Participants: This project is intended for mid-level radio producers, programmers, editors, writers, announcers and administrative personnel.

Summary: This project is designed to encourage responsible and independent journalism while providing an opportunity to upgrade technological training and journalistic skills. It will consist of visits to a wide variety of radio stations in the U.S., including commercial, public, religious, national, and local stations as well as an intensive skills workshop in an academic setting. Participants will hear discussions of broadcasting regulations and journalism ethics, observe programming, news gathering, interviewing and production techniques, and learn about the impact of technology on radio broadcasting in the U.S. Additional topics for discussion will include programming and production of news, current affairs and features programs, sports coverage, radio talk shows, cultural and music programs, religious programs, and programs for children. Round-table discussions throughout the program will allow participants to share reports on the status of radio broadcasting in their own countries with their colleagues and American counterparts.

The project will open in Washington, DC, with panel discussions by noted scholars and public officials on the function and responsibilities of the media in a democratic society, the U.S.

commitment to a free press, U.S. international communications policies, and the historic role of radio broadcasting in American society. Participants will meet with administrators and Washington correspondents of domestic and foreign radio organizations at the VOA, Radio Marti, the Foreign Press Center, Accuracy in Media, the Public Broadcasting Service, and the Washington bureaus of major radio stations. They will attend a State Department daily press briefing and visit the Congressional press gallery to observe coverage of those institutions by radio correspondents.

The program beyond Washington should include a three to four day academic program at an institution or university specializing in radio broadcasting for lectures and workshops on radio broadcasting as a business, liability to libel, professional standards in journalism, audience research, marketing and advertising, fund-raising for nonprofit radio stations, station management, minority broadcast ownership, the free flow of information and the impact of technology.

The project will also include team visits to medium and small cities and towns where participants will explore the role of radio broadcasting in community development, learn about the relationship between broadcasting and local government, and see the impact of radio in rural communities. In addition, all visitors will have opportunities to meet with journalism students in the classroom or with civic or professional groups to talk about their professions, their countries, and their perceptions of the U.S.

Home hospitality invitations with professional colleagues and ordinary Americans will provide informal settings for further discussions about everyday life, social issues, and the American approaches in dealing with them.

Title: The Administration of Courts in the U.S.

Type: Multi-Regional.

Dates: June 28-July 23, 1993.

Proposal Due: April 19, 1993.

Project Goals:

- To provide a better understanding of court management concepts and the applications of new technology to court operations;
- To enhance understanding of the dynamics of the U.S. judicial system;
- To review constitutional, legislative and legal protections for the rights of individuals;
- To familiarize participants with the principles of the American legal

system, including the Constitution, separation of powers, the Supreme Court, the Federal Court system and the structure of state and municipal courts.

Participants: This project is intended for judges, law professors, lawyers, court administrators and justice officials who are interested in observing and discussing ways to make courts operate more efficiently.

Summary: This project will begin in Washington, DC, with an introduction to the American legal structure within the U.S. federal system. Participants will meet and hold discussions with representatives of the Executive, Judicial and Legislative Branches of Government. Highlights will include appointments at the Attorney General's Office, the Solicitor General's office, the Civil, Criminal and Civil Rights Divisions of the Department of Justice, the Federal Judicial Center, the U.S. Supreme Court, the U.S. District Court of Appeals, and the House and Senate Judiciary Committees. Participants will also observe the U.S. District Court in session.

Beyond Washington, DC, participants will disperse to cities and towns across the country to visit court systems of relevance to their situations at home and to gather first-hand information on the application of court management concepts, including jury management, budgeting and planning, caseload management and delay reduction, personnel administration, appellate courts administration, space management and facilities planning, court security, the management of juvenile courts, and applications of new technology to court operations.

To better understand the machinery of the American system of justice and its application, participants will travel to various regions of the U.S. and have the opportunity to meet with the local court administrators, State Attorneys General, jurors and judges. By observing court proceedings, meeting with local law enforcement officials, attending classes at law schools, and meeting informally with law faculty and students, the visitors get a closer and more detailed look at a very complex system.

For a more individualized, small-group experience, the visitors will be divided into teams at some point during the course of this program. Cities equal in character and size will be visited by each team where similar aspects of the program topic will be covered. In this way, participants will have new experiences to share with their fellow colleagues when the teams are reunited, and they will have the opportunity to

compare and contrast have certain subject areas were addressed in these different locations. In addition, all visitors will have opportunities to meet with law school students in the classroom or with civic or professional groups to talk about their professions, their countries and their perceptions of the U.S.

Home hospitality invitations with professional colleagues will provide informal settings for further discussions of legal and social issues and the American approaches in dealing with them.

Title: The Role of Volunteers and Community Service Groups.

Type: Multi-Regional.

Dates: July 19-August 13, 1993.

Proposal Due: May 10, 1993.

Project Goals:

- To illustrate how the values of fairness and equal opportunity underlie American society and contribute to a widespread commitment to volunteer service;
- To explore the role of voluntary service as a way of addressing the many social problems faced by a rapidly changing society;
- To provide information on planning, designing, managing and developing volunteer programs;
- To facilitate the exchange of ideas and experiences between volunteer organizations in the U.S. and those in participants' home countries.

Participants: This project is intended for government officials and community leaders who are active in volunteer work, administrators of volunteer programs, and scholars and professionals who are interested in research related to citizen participation in community development.

Summary: This project is designed to illustrate how strong ethical, social, and moral values form the basis for the vast array of human services offered in America through the efforts of unpaid individuals. Additionally, emphasis will be placed on the non-monetary benefits which these individuals realize through their volunteer efforts such as enhanced self esteem and greater social awareness.

The program will open in Washington, DC, with an overview of the American tradition of volunteerism, government and corporate efforts to promote voluntary service in community development, and the many types of private volunteer programs throughout the country. The overview will also provide background on the educational, political, economic and social systems of the U.S., with an emphasis on how

they encourage volunteer service. Appointments will be scheduled at Vista, the Peace Corps, and the President's Commission on Volunteerism, as well as possible visits to programs for the homeless or people with AIDS. A specialist in the field will describe how U.S. tax incentives stimulate charitable donations by both corporations and individuals and how laws encourage tax-exempt organizations to exist for the public benefit.

Beyond Washington, a one-day seminar organized by a volunteer center will cover issues involved in creating and administering volunteer programs. It also will explore the benefits which voluntary service contributes to both community and personal development, emphasizing the creation of community partnerships that cross racial, cultural and religious lines. Additionally, the seminar will outline the skills which individuals acquire in the areas of teamwork and goal-setting, skills which contribute directly to advancement in paid positions, especially for women and minorities. Another seminar session will provide participants an opportunity to share information on volunteer efforts in their home countries with their colleagues and American counterparts. Another panel will familiarize participants with the work of major university-based research programs that focus on the not-for-profit sector.

Programs in cities and small towns in different regions of the country will allow participants to work side-by-side with American volunteers in order to become familiar with the daily operation of volunteer organizations addressing social concerns ranging from human services to international and cross-cultural exchange. Examples of community/government/business cooperation in addressing these issues will be explored. Additionally, participants will learn about the role of volunteer organizations such as Common Cause and the League of Women Voters play in providing avenues for citizen participation in the political process and in increasing governmental accountability. In a visit to a public action lobbying office, participants will discover the power of volunteerism in influencing public policy decisions.

For a more individualized, small group experience, the visitors will be divided into teams at some point during the course of this program. Cities equal in character and size will be visited by each team and similar aspects of the program topic will be covered. In this way, participants will have new

experiences to share with their fellow colleagues when the teams are reunited, and they will have the opportunity to compare and contrast how certain subject areas are addressed in these different locations.

As the NCIV network is so fundamental to the USIA IV program, the importance of this organization will be highlighted as the project unfolds across the country. In addition, home hospitality invitations with professional colleagues and ordinary Americans will provide informal settings for further discussions of legal and social issues and the American approaches in dealing with them.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of expert USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of program idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Agency and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet with program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Value to U.S.-Partner Country Relations:* Assessments by USIA's geographic area desks and overseas officers of the needs, potential impact

and significance in the partner country(ies).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Track Record/Ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Greatest return on each grant dollar and degree of cost-sharing exhibited will be considered.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process approximately six weeks prior to the project's opening date. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: July 28, 1992.

Barry Fulton,

Deputy Associate Director, Bureau of Education and Cultural Affairs.

[FR Doc. 92-18399 Filed 8-3-92; 8:45 am]

BILLING CODE 8230-01-M

Congress-Bundestag Youth Exchange Program

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency, announces a competition for exchange organizations to administer

the post-secondary component of the Congress-Bundestag Youth Exchange Program (CBYX). Organizations will be competing for the (A) Young Professionals Component, (B) the Vocational School Graduates Component, and (C) the Agricultural Component. Organizations that are successful in this competition will be awarded grants in FY 1994 to administer the exchange for academic year 1994-95 and will also be eligible for grants in FY 1995 and 1996. One grant for each component will be awarded. Final determination of grant amounts is subject to the availability of funding and will be based on final budget submissions to be negotiated following preliminary selection decisions.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, September 25, 1992. Faxed documents will not be accepted, nor will documents postmarked on September 25 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin November 1, 1993.

Selection decisions will be made by December 31, 1992, and will be coordinated with the Government of Germany, which is simultaneously selecting the German counterpart organizations that will administer the program in Germany. Final budgets, based on guidance to be provided by the Agency, will be required from the selected organizations by August 31, 1993. Duration: The duration of the initial grants will be from November 1, 1993, to July 31, 1995. No grant funds may be expended until the grant agreement is signed.

ADDRESSES: The original and twelve copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Congress-Bundestag Program (CBYX), Office of Grants Management (E/XE), Room 357, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Ms. Bettye Stennis, Youth Programs Division (E/VY), room 357, 301 4th Street SW., Washington, DC 20547; telephone 202-619-6299 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview

The Congress-Bundestag Youth Exchange Program (CBYX), known in Germany as the Parlamentarisches Patenschafts-Programm (PPP), is an official exchange program of the Congress of the United States, administered by the US Information Agency, and the German Bundestag. It provides a scholarship for an academic year experience of living and studying in the host country. Part of the exchange involves students aged 16-18, who live with host families, attend high school ("Gymnasium" in Germany), and participate in community life. This component is not subject to competition this year. Another component is dedicated to young professionals aged 18-24 who study at community colleges or universities and receive training. Additional components involve young farmers and vocational school graduates (described in more detail below). Each government provides funding through grant awards for the costs of recruiting, selecting, orienting, and debriefing of its nationals and their international airfare; and most hosting costs (specified below) for the duration of the foreign nationals' stay. Participants themselves pay domestic travel to the port of departure and provide their own funds for their daily needs. Grant proposals may include a provision for partially or fully covering this cost for financially needy participants.

The USIA health and accident insurance plan is used exclusively for all German participants, and its cost is covered by USIA; the German Government provides insurance for Americans while in Germany. American organizations that deem it necessary to carry liability insurance on the German participants are responsible for providing for this coverage at their own expense.

The actual number of participants selected each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. A final determination of exchange numbers for each academic year is made in the preceding December when representatives of both governments hold annual bilateral discussions. Participants are chosen according to procedures and criteria established by each government.

Guidelines

Grant awards will be made in the following categories:

A. Young professionals component—One organization will be awarded a grant to administer this component. The grantee will work in Germany with a partner organization that meets the qualifications for a grant from the Bundestag. The U.S. organization will be responsible for: the recruitment and selection of approximately 50 young U.S. men and women aged 18-24, who will study and participate in an internship in a field related to their career interest during the exchange year; their pre-departure orientation (approximately 3 days); international travel arrangements; and close coordination with its German partner to monitor the progress of the U.S. participants and resolve problems. The grantee will also be responsible for arranging and monitoring all activities relating to approximately 70 German young professionals aged 18-22 during their stay in the U.S. The German participants will be working professionals or recent graduates of technical or vocational schools. Many will have completed their apprenticeships in Germany, while others will have little on-the-job experience. The organization will: conduct a 3-day arrival orientation; arrange their placement in colleges and practicums (internships); recruit, screen, and orient host families; make arrangements for the group's visit to Washington for a 3-day cultural and educational program; provide supervision and counseling of the participants as needed; handle all administrative and logistical matters including in-country travel; and coordinate with USIA in administering its health and accident insurance plan. Any language training for Americans will be the responsibility of the German partner organization. Organizations may include other program elements in their proposals, bearing in mind that funding is limited.

Each German participant will be placed in a two- or four-year college for full-time study, a minimum of 12 credit hours, for one semester. The grantee may need to arrange for English classes for those participants whose English is inadequate. To save costs, the organization is encouraged to seek tuition waivers and cost-sharing with cooperating colleges. Each participant will have a full-time practicum or internship in his/her professional field for the second half of the program year. Each practicum should be based on a prospectus of the specific skills and

functions that will be mastered, and it should include a structured learning component that enables the participant to gain a perspective on the overall operation of the firm. A stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but the stipend should be substantially reduced or eliminated during the second half of the program when the firms or agencies hosting the practicums provide an allowance for living expenses. Where possible, hosting arrangements should be found that do not require subsidization.

B. Vocational School Graduates Component—One grant will be awarded to an organization to administer the program component designed for 20 U.S. vocational school graduates. The grantee will work in Germany with a partner organization that meets the qualifications for a grant from the Bundestag. The American organization is responsible for recruiting and selecting 20 men and women aged 18–20 who will complete vocational school studies prior to departure for Germany. The grantee is encouraged to work with vocational educational offices at the state level in addition to administrators of secondary schools with vocational educational divisions in the selection process. In addition to the selection process, the grant pays, and the grantee arranges, international airfare from the port of departure to Frankfurt, an orientation program of up to 4 days in Washington, and a debriefing session (preferably in Washington) at the conclusion of the program. The grantee will work with its partner in Germany, which is responsible for the following (funded by the German Government): Arrival orientation, up to 2 months of language training, family and school placement, arrangements for a practicum in the participants' fields, counseling and support, excursions, and administration, including insurance.

C. Agricultural Component—One grant will be awarded to an organization to administer a small component for agricultural youth. The grantee will work in Germany with a partner organization that meets the qualifications for a grant from the Bundestag. Up to 12 Germans and 12 Americans will be chosen annually for a program that combines academic study and living on a farm. The Germans will be aged 18–24 and will spend one semester full-time at a community or technical college; the second semester is for practical experience on the host farm. As an alternative, a program may be arranged that includes part-time

study and part-time farm activities for the year. Host farms should be selected to match the specific interests of the participants and should design a structured plan to enable the participant to learn about and practice a wide range of skills and tasks on the operation and function of the farm. The organization: identifies appropriate community or technical colleges and arranges for the German participants' admission, preferably securing tuition waivers or breaks; recruits, screens, selects and orients host families; conducts an orientation for the participants upon arrival; arranges a mid-year cultural activity appropriate to the group's interests; handles all in-country (US) travel and logistical arrangements; and provides supervision and counseling services.

The outbound Americans will be high school graduates, who will receive technical schooling in Germany and experience farm life with their host families. The grantee organization: recruits and selects the American students; provides pre-departure orientation to these participants; arranges their international travel; monitors their progress in conjunction with its German partner and engages in program evaluation upon their return to the U.S. and follow-up.

Proposed Budget—Organizations must submit a comprehensive line item budget for which specific details are available in the application packet. The estimated amount of funds likely to be available for each category is: (A) Young professionals \$600,000; (B) Vocational school graduates \$60,000; (C) Agricultural \$85,000.

Eligibility requirements—To be eligible for consideration in this competition, an organization must:

1. be legally incorporated and have a legally incorporated affiliate in Germany that meets the Bundestag Administration's eligibility requirements;
2. have a not-for-profit status, as determined by the Internal Revenue Service; the German affiliate must also be not-for-profit ("gemeinnützige");
3. be financially solvent, have a demonstrated track record of responsible fiscal management and be able to meet the accounting and reporting requirements for Agency grants;
4. have four years' experience in conducting long-term exchange programs (of at least 9 months duration) between the United States and Germany; and
5. have well-established national volunteer and host family networks to

carry out various aspects of the program; regional representatives must be situated in such a way to handle expeditiously any problems that arise regarding host family accommodations, schooling and language problems, or difficulties concerning internships.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Ineligible proposals will not be considered for funding. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. **Quality of the program idea:** Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.
2. **Program Planning:** Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. **Ability to achieve program objectives:** Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
4. **Multiplier effect/impact:** Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.
5. **Value of U.S.-German relations:** Assessment of USIA's geographic area desk, USIS/Germany and the German Government of the potential impact and significance of the proposed projects.
6. **Institutional Capacity:** Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.
7. **Institution's Track Record/Ability:** Proposals should demonstrate a track record of successful programs, including

responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. *Evaluation Plans:* Proposals should provide a plan for evaluation by the grantee institution.

10. *Cost-effectiveness:* The overhead and administrative components of

grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the

Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or before January 31, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: July 27, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-18316 Filed 8-3-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 150

Tuesday, August 4, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 6, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: July 30, 1992.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 92-18573 Filed 7-31-92; 2:42 pm]

BILLING CODE 6355-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-22]

TIME AND DATE: August 10, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and complaints.
5. Inv. 701-TA-319-354 and 731-TA-573-620 (Preliminary) (Certain Flat-Rolled Carbon Steel Products)—briefing and vote.

6. Inv. 701-TA-309 and 731-TA-528 (Final) (Magnesium from Canada)—briefing and vote.

7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Paul R. Bardos, Acting Secretary, (202) 205-2000.

Dated: July 21, 1992

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92-18549 Filed 7-31-92; 2:43 pm]

BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-23]

TIME AND DATE: August 19, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-621 (Preliminary) (Compact Ductile Iron Waterworks Fittings and Parts Thereof from the People's Republic of China)—briefing and vote.
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Paul R. Bardos, Acting Secretary, (202) 205-2000.

Dated: July 30, 1992.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92-18550 Filed 7-31-92; 2:43 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 3, 10, 17, and 24, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 3

Tuesday, August 4

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 7

10:30 a.m.

Discussion of Matters Related to Quality Management and Misadministration Rule (Closed—Ex. 5, 9B and 10)

Week of August 10—Tentative

Wednesday, August 12

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 17—Tentative

Tuesday, August 18

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 24—Tentative

Wednesday, August 26

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no items have as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION:

William Hill (301) 504-1661.

Dated: July 30, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92-18521 Filed 7-31-92; 2:44 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register

Vol. 57, No. 150

Tuesday, August 4, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

RIN 0581-AA49

Procedures for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order and Rules of Practice Governing Proceedings on Petitions to Modify or to Be Exempted From Such Order

Correction

In rule document 92-17000 beginning on page 31948 in the issue of Monday, July 20, 1992, make the following corrections:

On page 31951, in the first column, in the 12th line, the last sentence in the paragraph should read: "Further, for the same reason, the phrase 'on average' has been added to the definitions of 'eligible producer' and 'eligible importer,' and, in the definition of 'eligible producer,' the term 'lessor-lessee' has been changed to 'landlord-tenant.'"

§ 1209.301 [Corrected]

On page 31952, in the first column, in § 1209.301(g), the first sentence should read: "(g) *Eligible importer* means any person defined as an importer who imports, on average, over 500,000 pounds annually during the representative period."

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 88-143-1]

RIN 0579-AA12

Importation of Fruits and Vegetables

Correction

In proposed rule document 92-13994 beginning on page 26620 in the issue of Monday, June 15, 1992, make the following corrections:

1. On page 26624, in the table, in the 21st line, "(70° - 70° F)" should read "(70° - 79° F)".

§ 319.56-2t [Corrected]

2. On page 26628, in the table, in the entry for "Guatemala" after "Tarragon", in the third column insert "Yam bean", in the fourth column insert "*Pachyrhizus tuberosus* or *P. erosus*", and in the fourth column insert "root". Also, in the entry for "Japan", under "Soybean", in the third column "*Clycine*" should read "*Glycine*".

3. On page 26629, in the table, in the first column, the seventh line should read "Bean, green and lima (pod) *Phaseolus velgaris* and *P. luntus*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-4214-10; IDI-29260]

Proposed Withdrawal and Opportunity for Public Meeting; ID

Correction

In notice document 92-15906 beginning on page 30228 in the issue of Wednesday, July 8, 1992, on page 30229, in the first column, in the fourth full paragraph beginning with "Thence:", in

the fourth line, "S. 81" should read "N. 81".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-7122-10-6516; CA-30093]

Realty Action; Proposed Exchange of Public Lands in Imperial County, CA

Correction

In notice document 92-13176 beginning on page 24058 in the issue of Friday, June 5, 1992, make the following correction on page 24508, in the third column, under description "T.12 S., R.16 E.: Sec.10;" in the second line, "N½SE¼, NW¼" should read "N½SE¼NW¼".

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 519, 522, 523, 524, 556, 558

Service; Approval of Class II and Class III Gaming Ordinances Under the Indian Gaming Regulatory Act

Correction

In proposed rule document 92-15879 beginning on page 30346, in the issue of Wednesday, July 8, 1992, make the following corrections:

1. On page 30346, in the third column, in the last line, "e" should read "ordinance".

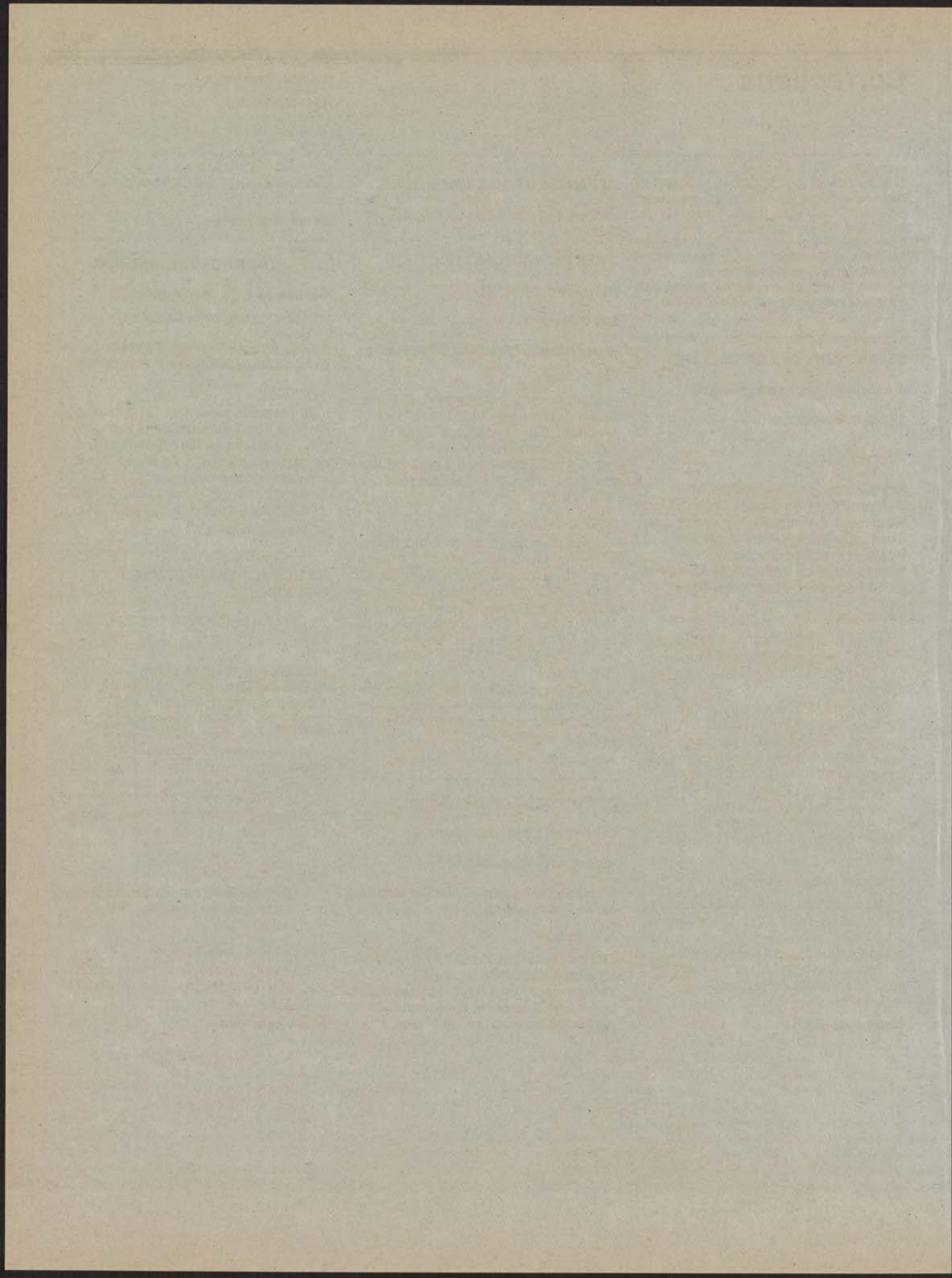
§ 522.2 [Corrected]

2. On page 30350, in the first column, in § 522.2(a), in the first line, "81½" should read "8½".

§ 522.6 [Corrected]

3. On page 30350, in the third column, in § 522.6(b) in the first line "r" should read "or".

BILLING CODE 1505-01-D



45 CFR Part 98 Federal Register

**Tuesday
August 4, 1992**

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 98 and 99

**Child Care and Development Block Grant;
Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 98 and 99

RIN-0970-AA92

Child Care and Development Block Grant

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 5082 of the Omnibus Budget Reconciliation Act of 1990, entitled the "Child Care and Development Block Grant Act of 1990" (the Act). The purpose of this Block Grant is to increase the availability, affordability, and quality of child care. To accomplish this purpose, Federal funds are available to States, Indian Tribes and Territories to provide grants, contracts, and certificates for child care services for low-income families with a parent who is working or attending a training or educational program. Funding is also provided to improve the availability and quality of child care and for early childhood development and before- and after-school services. To afford parents a broad range of child care choices and services, the Act provides parents specific options regarding the selection of child care providers.

EFFECTIVE DATE: August 4, 1992. (For further information, please see "Program Implementation Dates.")

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Administration for Children and Families, Child Care Division, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401-9326.

SUPPLEMENTARY INFORMATION:

Background

The child care needs of low-income families are addressed by a number of programs administered by ACF. In the past four years, the scope of ACF-administered child care programs has broadened to address the child care needs of increasingly larger segments of the population. ACF's programs reflect a growing awareness of the needs of, and commitment to, the family.

In the Omnibus Budget Reconciliation Act of 1990, Congress established two new child care programs: the Child Care and Development Block Grant program; and the At-Risk child care program, which provides child care for low-income working families in need of such care and at risk of becoming eligible for

Aid to Families with Dependent Children (AFDC).

The 101st Congress finalized the Child Care and Development Block Grant legislation after two years of protracted debate within Congress and between Congress and the Administration. The bill resulted from a new compromise between the House, the Senate, and the Administration. The bills which individually passed the House (H.R. 3) and the Senate (S. 5) were not the basis for crafting the compromise, as the Congressional leadership and the Administration agreed to start anew in crafting this legislation.

As a result, there is relatively little legislative history that is instructive in drafting regulations that reflect the clear intent of the law. The Department has carefully examined the legislation, the Conference Report (H.R. Rep. No. 964, 101 Cong., 2d Session 922, reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2827; hereafter, the Conference Report), and the Congressional debate on final passage of the bill. We also have discussed the background and the developments that went into the drafting of the legislation with Congressional and Administration representatives in the effort to develop regulations that accurately reflect the program that was drafted with the bipartisan support of Congress and the President.

Comment: A few commenters believed that instructive legislative history does exist.

Response: Although other child care bills had been proposed in previous Congressional sessions, the Child Care and Development Block Grant Act was a new bill. While the Block Grant may share similar language with other bills, the intent of those previous Congresses is not dispositive of the intent of the Congress which passed the Block Grant legislation.

Throughout this preamble, we will refer to the Child Care and Development Block Grant as "the Block Grant." When we refer to "Indian Tribes" and "Tribal Grantees," we include Indian Tribes, Alaska Native organizations, and Tribal organizations, including Tribal consortia, unless otherwise specified. Similarly, when we refer to "State and local law," we include the appropriate level of Territorial and Tribal law. When we refer to "States" and "Grantees," we include States, Territories, and Indian Tribes, unless otherwise specified. We use the term "States" for ease of reference. Unless otherwise specified, all provisions of the regulations apply to Tribal and Territorial Grantees, as well as States. As described in §§ 98.50 and 98.51 and pursuant to the Act, the Block Grant is

divided into two portions—75 percent generally for child care services and 25 percent for specified quality and availability improvements. We refer to these as the "75 percent" and "25 percent" portions. Additional definitions are included in § 98.2 of the regulations.

In drafting the final rule, we considered letters received in the mail and comments from numerous meetings held with representatives of State governments, Indian Tribes, Alaska Native organizations, child advocacy organizations, child care providers and organizations, and other interested parties. We carefully reviewed the 1,475 written comments which we received on various aspects of the regulations. These included comments from Members of Congress, States and Tribes, Representatives of State legislatures, private individuals, child care organizations and providers, resource and referral agencies, child advocacy groups, non-profit organizations, and unions. Further, we considered the testimony at both Congressional hearings held in the fall of 1991 to discuss the impact of the interim final rule, as well as subsequent Congressional comments and requests.

We include comments to the interim final rule throughout this preamble discussion, both generally and with specific responses. This final rule includes all provisions relating to the Block Grant, even those that have not been changed, and this preamble discusses all substantive changes to provisions of the regulations. We do not discuss minor wording changes made for clarity or to correct typographical errors in the interim final rule.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

- Has an annual effect on the national economy of \$100 million or more;
- Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or
- Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect the increased expenditures authorized for the Child Care and Development Block Grant to have an annual effect on the national economy

of over \$100 million in the first five years of operation. We base the calculations for expenditures under the Act on the anticipation of increased expenditures in child care programs and related supportive services.

According to the Office of Management and Budget instructions for preparation of Regulatory Analyses (found in appendix V of the annual Regulatory Program), "expenditure rules" establishing terms or conditions of grant programs should ordinarily only "verify that the terms or conditions are the minimum necessary to achieve the purposes for which the funds were appropriated. They should not contain conditions in pursuit of goals that are not germane to the purpose for which the funds were authorized and appropriated * * *. Maximum discretion should be allowed in the use of Federal funds, particularly when the Grantee is a State or local government." The instructions do not create any regulatory burden other than that incident to prudent purchasing and management requirements.

With respect to these management requirements, we believe that we have imposed only the minimum conditions necessary to achieve statutory purposes. There are no non-germane conditions. However, there is an inherent tension between maximum flexibility for Grantees and the statutory goal of assuring maximum parental choice, which we analyze in the responses to comments and in the Federalism section below.

This regulation establishes procedures which allow Grantees to expend the monies authorized by the Act and provides Grantees with a great deal of flexibility and latitude in program design. Regulatory constraints on Grantees' administrative processes are minimal. Consistent with the Act and legislative history, however, we require Grantees to guarantee parental choice and to ensure that Grantees target resources according to statutory intent.

The regulation does not significantly restrict Grantees in designing and implementing Block Grant programs. Rather, our approach is sensitive to the need for flexibility in the design of programs and administrative processes. For example, we provide Grantees with a great deal of latitude in designing and operating certificate programs. Similarly, with regard to health and safety and registration requirements, we give Grantees substantial flexibility in providing for any necessary requirements. We establish no minimum standards. Additionally, we do not specify that programs be statewide. We expect substantial variation in Grantee

programs. The major issues of concern to Grantees result from the requirements of the Act.

The regulation in and of itself imposes minimal additional administrative costs, although we anticipate that some Grantees might choose to undertake activities not required (but permitted) by the Block Grant that would entail significant administrative cost increases. At the Federal level, we anticipate total administrative costs of less than \$3 million.

At the Grantee level, the regulation potentially requires additional administrative effort in five areas:

(1) Grantees must assure that all those who provide child care services funded by the Block Grant meet minimum health and safety requirements;

(2) Grantees must "register" providers that are not otherwise licensed or regulated by the State;

(3) Grantees must maintain a record of substantiated complaints and make such information available to the public on request;

(4) Grantees must make consumer information available to parents and the general public; and

(5) Grantees must allow parents to choose their child care provider through a certificate program.

We discuss health and safety and registration requirements in §§ 98.41 and 98.45 respectively. With regard to health and safety requirements, the regulation expressly states that Grantees are not required to impose additional health and safety requirements if existing State or local requirements meet the requirements of the Act and regulations; Grantees may maintain existing standards. Similarly, registration requirements apply only to providers which are not otherwise licensed or regulated by the Grantee. Moreover, registration requirements must be minimal and limited to those measures necessary to facilitate appropriate payment to providers and permit the Grantee to furnish information to providers.

Regarding maintenance of a record of substantiated complaints and providing consumer information, we understand that most Grantees already have these processes in place. Moreover, 20 percent of the 25 percent portion of the Block Grant is reserved for these and other quality activities. We thus anticipate that additional costs associated with these activities will either be minimal or will be accomplished as part of Grantees' programmatic expansion of quality activities under the 25 percent portion of the Block Grant.

We realize that requiring Grantees to allow parents to choose their child care

provider will entail additional costs for some Grantees. The main cost associated with allowing parents to choose their child care provider (aside from the entry of new providers into the Grantee's licensing and regulatory system, at least to the extent that they must be registered and meet minimum health and safety standards described above) is the fact that Grantees must provide payment to providers which the Grantee would not otherwise pay for child care services. While we do not have a precise estimate of the additional administrative costs associated with a certificate program, we expect that the total cost of operating a certificate program would not be significantly greater than the administrative burden associated with grant and contract programs.

The regulations thus require that Grantees undertake additional administrative expense related to registering, monitoring, and paying providers which might not otherwise participate in a Grantee subsidized child care program. We anticipate that costs associated with these registration, monitoring, and reimbursement requirements will be less than 11.25 percent of the total Block Grant, and our expectation in this area was reflected in the limitation of non-service costs to a maximum of 15 percent of the 75 percent portion of the Block Grant. For funds available for FY 1991, we therefore anticipate \$82 million in associated administrative costs. For FY 1992, we anticipate \$93 million of associated administrative costs and, based upon the President's budget request, \$96 million of associated administrative costs for FY 1993.

This is not to say that Grantees will not spend more than \$82 million of FY 1991 funds on administration. We anticipate, however, that spending above this amount is associated with activities not required by the Block Grant. For example, Grantees might hire more licensing and regulatory personnel to monitor all child care; while this is an approvable Block Grant activity and expense, it is not required as a result of the Block Grant.

Currently Projected Costs and Benefits

We considered two broad alternatives regarding publication of this final rule:

Alternative 1

The Department could issue regulations similar to those for other block grant programs. Such regulations would provide greater latitude to Grantees with regard to the interpretation of statutory provisions.

Alternative 2

The Department could issue regulations which provide Grantees with more guidance than is typical for Departmental block grant programs. This additional guidance would: (1) Allow the Department to fulfill the substantial monitoring role required in the Act; (2) assist Grantees in striking a balance between competing principles embodied in the Act; and (3) clearly establish Federal policy with regard to the Child Care and Development Block Grant program at the program's outset. This alternative recognizes the basic historical difference between other block grant programs and the Child Care and Development Block Grant. Other block grant programs administered by the Department existed as programs before they were consolidated into block grants, providing an historical basis for policy and operational processes.

Consistent with the expenditure rules discussed in the Regulatory Impact Analysis Guidance (appendix V of the 1990 Regulatory Program) and quoted above, a full-blown benefit/cost analysis is not appropriate for this rule. For each of the two options detailed above, we believe that there will be minimal costs and benefits over and above the appropriated level.

This regulation will result in minimal costs above and beyond the appropriation level; fewer than 30,000 estimated annual burden hours are associated with the regulation. We anticipate administrative costs associated with Alternative 2 to be minimally more than those associated with Alternative 1. While we cannot quantify the difference, it will be somewhat less than 11.25 percent of the total Block Grant (\$82 million in FY 1991; \$93 million in FY 1992; and, based upon the President's budget request, \$96 million in FY 1993). This additional cost is due to the fact that Alternative 2 will require Grantees to interact with more providers, and in some cases may necessitate that Grantees hire additional staff.

Regarding benefits, we have no way of quantifying the value of benefits of child care services and quality improvement activities. The benefits may be higher or lower than the \$825 million, depending on the value of child care to the recipients. However, as discussed below, benefits under Alternative 2 will always be higher than under Alternative 1.

We assume that Alternative 2 will in all cases provide more benefits than Alternative 1 because Alternative 2 will contribute more to the increased

availability and affordability of child care. Alternative 1 would have resulted in less diversity of child care options and less overall care. It also would have created situations in which parents in need of assistance would be denied care or compelled to use an arrangement that, to them, would have been less preferable and less valuable than the child care of their choice. Alternative 2 guarantees that parents have the flexibility to make child care choices.

Freedom of choice in and of itself entails an economic benefit known as "allocative efficiency." To use a simple example, consider the difference between giving a person five dollars in cash and giving him/her five dollars worth of apples. Most people would prefer the five dollars in cash, because the cash affords more flexibility. Even if someone wants apples, he/she might prefer a different type, or perhaps prefer a combination of other fruit or bread and apples to all apples. Moreover, some people do not like certain varieties of apples, and would therefore value the apples well below the five dollar cost of the product.

This concept of allocative efficiency applies to all goods and services, including child care. Due to allocative efficiency, a child care certificate to purchase a given dollar amount of child care has more value, i.e., produces more benefits, than a contract with a single provider to purchase the same dollar value of child care.

Moreover, unlike many other goods and services, child care is not a homogeneous service but rather a differentiated one. That is, unlike, say, apples, where one unit of Delicious apples is virtually indistinguishable from other units of Delicious apples, child care varies based upon setting, proximity, curriculum, personal relationship, and a myriad of other factors. Thus, although a child care provider may typically charge, for example, \$100 per week for infant care, that care is not necessarily worth \$100 to everyone with an infant needing child care. For some people, care provided by this particular provider may be worth less than \$100 because the caregiver is inconveniently located, or because the parents' lack of familiarity with the caregiver causes increased family stress and the need for more frequent visits and calls. If this caregiver is the only option, some people who value the care at less than the \$100 cost will take the care despite the fact that they (the parents) do not receive a full \$100 worth of benefits, as they would receive with another more convenient or familiar caregiver. Given the legislative mandate to provide for child care services, ACF

has maximized the utility to the recipient by assuring the widest range of choices possible through the certificate program.

In a certificate program, however each dollar of the certificate is worth a full dollar of child care. Parents have the choice of using many providers, including the ones with which the Grantee might otherwise choose to contract. Thus, benefits under Alternative 2 will always exceed the benefits that would accrue under Alternative 1.

There may be increased administrative costs for State lead agencies due to the expansion of child care programs and related support systems. Lead agency decisions concerning child care programs and supportive services will affect administrative costs. As discussed above, however, these costs will generally be covered by the funds from the Block Grant and are minimally increased by the requirement of a certificate program. We believe that the benefits gained by the requirement of a certificate program will far outweigh the costs required by such a program.

National spending on child care was approximately \$24 billion in 1990 and is growing each year. Some of the spending on this program will inevitably displace spending which would have come from other sources. Therefore, the overall economic impact of this program on the child care market will not significantly affect the size of the market. Additionally, there is no evidence that competition, employment, investment, productivity, innovation or the United States' competitiveness will be affected adversely as a result of these regulations.

The nature of the Block Grant does raise possible concerns of vertical and horizontal equity. With regard to the Block Grant, however, these potential inequities arise only to the extent that they are inherent in non-entitlement programs that have income cut-offs and target groups.

Issues of horizontal equity (i.e., the fact that people in similar circumstances will be treated differently) may arise only in response to Grantee priorities. Since the Block Grant is not an entitlement and there is no requirement that the Block Grant benefits be uniformly distributed throughout the State, persons in different parts of the area served by the Grantee may be treated differently, even if their family and income circumstances are identical. Such a difference in practice would result not from Block Grant policy or regulation, but rather from the Grantee's

administrative decisions to target certain areas.

Additionally, based upon reviews of initial Grantee Plans, it appears that most Grantees will operate "statewide" programs, providing service first to those who apply first. To the extent Grantees use such practices to ration services, those persons with better access to information will be relatively advantaged. This effect will be ameliorated by the general availability of other subsidized child care programs (e.g., child care funded with title XX, or with other State or local funds, as well as the availability of tax credits).

Vertical inequities will also occur. Due to the nature of the Block Grant, indeed, due to the nature of any program with income limits, the potential for a "notch" effect exists; that is, people just above the income cut-off for eligibility receive no benefits at all, while people who are just inside the cut-off may receive a substantial benefit. With regard to the Block Grant, however, the fact that services must be subject to a sliding fee scale minimizes this effect by gradually phasing out the subsidy as family income increases.

Again, initial Plan reviews indicate that many Grantees intend to allocate services primarily to priority groups (i.e., children with special needs or from families with very low incomes). Thus, the existence of vertical inequities in part reflects successful targeting of resources to those groups most in need.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. section 605(b), enacted by Public Law 96-354, the Regulatory Flexibility Act, that this rule will not result in a significant impact on a substantial number of small entities because the rule primarily affects State governments, which are not "small entities" within the meaning of that Act.

Child care providers such as child care centers, family child care providers, and other providers are considered "small entities" within the context of Executive Order 12291 and the Regulatory Flexibility Act. Because

these regulations provide parents with great authority in their use of child care certificates and choice of providers, and States with flexibility to prescribe standards for child care providers funded under the Act, they do not directly impact small entities, either favorably or adversely. Instead, impacts will depend on future State decisions.

For instance, section 658E(c)(2)(E) of the Act requires States to assure that all providers of child care services for which assistance is provided comply with all licensing or regulatory requirements applicable under State and local law. Section 658E(c)(2)(F) of the Act requires that States assure basic requirements are in place to protect the health and safety of children who receive services under the Block Grant. This rule allows Grantees great flexibility with regard to such requirements and, in fact, anticipates that in many circumstances no additional requirements need to be put in place because requirements (e.g., local fire and safety codes) are already in place. Although child care providers may be affected by the provisions of the Act, the effect is not due to the rules implementing the Act. Variables such as the nature and extent of current State licensing and regulatory requirements, the mix of providers that participate in child care services under the Block Grant, the extent of any new health and safety requirements imposed by a Grantee, and the types of care chosen by parents will influence the extent of the effects of the Act on providers.

In addition, the parental choice provisions discussed below provide substantial assurance that State decisions will not adversely affect whole classes of providers. For these reasons, we conclude that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

Certain sections of this rule contain information collection requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter

35). The titles, descriptions, and respondent descriptions for the required information collection are shown below with estimates of the annual reporting and recordkeeping burdens. Included in the estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Titles: (1) Block Grant Application, (2) Block Grant Plan, (3) Financial report, (4) Annual report.

Descriptions: The Act establishes four recordkeeping and reporting requirements. First, an Application, including the Block Grant Plan, must be submitted as a prerequisite to receiving Federal funds to administer a Child Care and Development Block Grant. The Application must be submitted annually; however, the initial Plan for the States and Territories is valid for a three-year program period. Subsequent Plans are valid for a two-year period. All Plans for Tribal applicants are valid for a two-year period. The Application and Plan require Grantees to describe how they will implement the provisions contained in section 658E of the Act. Such information is necessary to determine whether an Application should be approved and if the program will be properly administered.

Next, the Act establishes a financial reporting requirement. Grantees must use the OMB approved Standard Form (Form 269 or 269A) to report total expenditures, unliquidated obligations, and program income, if any. This information is necessary to determine that the allowable statutory and regulatory timeframes for obligation and expenditure of funds are met.

Finally, section 658K of the Act mandates the collection of information to prepare an annual report to Congress. In designing the reporting form, we are considering comparability with reporting requirements for other child care programs administered by ACF.

Description of Respondents: States, Indian Tribes, and Territories.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
45 CFR 98.13.....	255	1	30 hours.....	7,650
45 CFR 98.16.....	255	1.5	50 hours.....	6,375
45 CFR 98.64.....	255	1	1 hour.....	255
45 CFR 98.70 & 98.71.....	255	1	50 hours.....	12,750

¹ Subsequent Plans will be submitted biennially (45 CFR 98.16).

Total Existing Burden Hours: 0
Total Proposed Burden Hours: 27,030
Total Difference: +27,030

As required by section 3504(h) of the Paperwork Reduction Act of 1980, ACF submitted a copy of the regulation to OMB for its review of these requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Child Care Division, Administration for Children and Families (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for ACF.

Federalism and Family Effects

Following is an assessment of this rule using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12606 on the Family

The Block Grant program is expected to have an overall beneficial impact on the family. We believe that all provisions of the Act, and these regulations, support parents' rights to educate, nurture, and supervise their children.

The objective of this program is to increase the availability, affordability, and quality of child care services. Such activities will enable families to maintain or achieve self-sufficiency through employment and training and to increase their earnings. For child care under the Block Grant, parents will be provided information about providers and will have access to their children while in care. Federal funding of this program will permit parents to choose from a broad range of child care providers, including child care centers, family child care providers, sectarian organizations, relatives, friends and neighbors.

This rule emphasizes the importance of parental choice in decisions regarding the type and location of child care providers. This emphasis sends a message of parental responsibility and authority.

The Block Grant does not substitute governmental activity for any of the functions of the family. Services will be made available by means of Federal funding to non-Federal levels of government, i.e., States and localities. For these reasons, this rule meets both the letter and spirit of E.O. 12606 on the Family.

Analysis Required by Executive Order 12612 on Federalism

We have determined that this rule will not have a substantial economic impact on States, Tribes or Territories, nor will it have a substantial impact on the relationship between the Federal government and these entities. It will not have a substantial effect on the distribution of power and responsibilities among the various levels of government (e.g., State and local governments). For these reasons, an in-depth analysis of the effect of this rule relative to the principles of Federalism is not required.

Nevertheless, an explanation of our regulatory approach is appropriate. Other block grant programs administered by the Department of Health and Human Services provide greater latitude to Grantees with regard to the interpretation of statutory provisions. In fact, most statutory provisions are not included in the regulations for these other programs. Grantees are responsible for interpreting statutory language; the Federal government intervenes only where the Grantee's interpretation of a statutory provision is "clearly erroneous."

We believe that there are a number of compelling reasons for the Department to adopt a different approach for the purpose of the Child Care and Development Block Grant. The first two reasons are based on the language of the Act.

First, Congress has required a substantial Federal role in monitoring the program, as evidenced by the provisions in section 658I(b) of the Act. The Secretary is required to monitor against the provisions of the Plan, as well as the Act. Substantial penalties, including suspension from further funding under the Block Grant, are specified. This monitoring requirement led us to conclude that Plan provisions should be set forth in regulation, in order to ensure that there would be a basis for Federal oversight.

Second, we believe that providing additional policy guidance through Federal regulations would be helpful in striking an appropriate balance between the competing principles of family and Federalism embodied in the Act. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, (1984) (deference is given to the administering agency charged with interpreting a statute when the statutory provisions are competing or ambiguous). Although the Act allows broad State discretion, such authority may not be exercised at the expense of parental choice. Based on prior experience, we

were concerned that some jurisdictions might consider regulations which would effectively eliminate most or all in-home care, family child care, relative or sectarian care.

Comment: A few commenters said that we were incorrect in suggesting that the Act creates competition between competing principles—State flexibility and parental choice—and that the safeguard on parental choice at § 98.30(g) should be deleted. These commenters believe that States have, in a sense, absolute authority to set health and safety requirements, as well as other standards, and that parental choice of providers is limited to only those providers which meet such requirements.

Response: We do not agree with this view. Clearly, both principles are embodied in the Act. Grantee programs must provide for parental choice of providers, but Grantees retain a great deal of flexibility in establishing requirements and standards. The Department is responsible for monitoring and oversight of this program, and we would be remiss if we failed to provide guidance through the regulation in an area which might become troublesome in implementation.

Giving Grantees unlimited authority to set standards for the Block Grant, as suggested by these comments, could undermine or effectively eliminate parents' flexibility to choose child care providers which satisfy family needs. Certificates which cannot be used because most providers do not meet Grantee requirements would nullify the requirement. In addition, it would be contrary to another objective of the program—to increase the availability of child care. Our approach does not prevent Grantees from establishing reasonable requirements or standards. However, it attempts to ensure that one requirement of the Act is not used, even inadvertently, to undo another. Grantees should adopt reasonable requirements, including currently-existing requirements, for providers which participate in the program.

Under the Block Grant program, some States with existing voucher programs might interpret the statutory requirements relating to the certificate program and parental choice in such a way as to limit a parent's ability to choose from a broad range of child care providers. For example, some States might seek to permit parents to choose only from those providers under contract with, or who are currently licensed by, the State. Our review of State Plans for implementation of the Block Grant indicates that this would

have been the case in many State programs. However, Congress intended to give parents the greatest flexibility in choosing among providers by requiring a certificate program that is available as an alternative to contracted care.

In addition, there is a basic historical difference between other block grant programs and the Child Care and Development Block Grant. The other block grant programs administered by the Department existed as programs before they were consolidated into block grants. There was, therefore, an historical basis for policy and operational processes. The Child Care and Development Block Grant, on the other hand, is a new program. We therefore believe that it is important and appropriate to clearly establish Federal policy with regard to the program at the outset.

Finally, because Grantees had such a limited amount of time available to develop their first Plans, we believed it would be helpful to provide them with specific guidance and incorporate all statutory requirements in the regulations so that they would only have to refer to one document to determine Federal requirements.

Several commenters disagreed with our regulatory approach. In particular, many States believed that certain regulatory provisions severely restrict State flexibility—specifically the limit on administrative costs and quality and availability improvements under the 75 percent portion of the Block Grant. As described in the appropriate sections below, we made many changes in direct response to comments, often providing additional flexibility in program design and administration.

Nevertheless, we continue to believe that the program is better served by a clear set of requirements to guide program implementation at the outset, rather than an attempt to do so after implementation. For example, limits initially set on administrative costs ensure that Grantees satisfy Congressional intent that the preponderance of funds under the 75 percent portion of the Block Grant be used for child care services, with a minimum amount for other activities. Attempting to establish such limits after Grantees have already planned programs and spent funds would have been impracticable. Clear guidance at the outset eliminates years of debate over the meaning of these requirements.

We are sensitive to the need for flexibility in the design of programs and administrative processes; in this rule we have attempted to balance the principles of Federalism and the family in such a way as to provide Grantees with

flexibility, yet protect the rights of parents. We allow most definitions and processes to be set by Grantees, and we have focused on outcomes. For example, we provide that in the certificate program the Grantee must permit a parent to send his or her child to a provider which he or she selects. Options include child care centers and family child care providers under contract with the Grantee, or neighbors, relatives, or sectarian organizations which accept certificates, so long as the provider meets the requirements of the Act. We do not, however, require any particular certificate form or process.

Similarly, with regard to health and safety and registration requirements, Grantees have substantial flexibility in establishing any necessary requirements. We set no minimum standards.

With regard to administration of the funds, the Block Grant program is subject to the regulations contained in 45 CFR parts 98 and 99 and any other regulations cited therein. While the Act and the regulations establish certain restrictions on the use of Block Grant funds, in many instances the requirements in parts 98 and 99 still allow Grantees to manage their grants according to their own State or local laws and procedures.

We believe that this overall approach does not substantially restrict States in designing and implementing this program. While States must meet all statutory requirements, which the Department intends to monitor, we fully expect substantial variation in Grantee programs. We do not specify that programs be statewide, nor do we provide definitions of all terms. We allow flexibility in setting sliding fee scales, in setting payment rates, in establishing additional eligibility conditions, and in targeting specific populations.

The States will serve as laboratories for testing unique solutions to the needs of families targeted by this program. ACF hopes to serve as the focal point for knowledge regarding these solutions, and to expedite the transfer of such solutions around the country.

General Analysis of Comments

Of the 1,475 comments received, 908 commenters (62 percent) generally supported the interim final rule as published; 216 commenters (15 percent) generally agreed with our regulatory positions, but cited specific suggestions for change; 286 commenters (19 percent) disagreed with portions of the regulations; and a few commenters (44, or 3 percent) voiced strong opposition to most of the regulatory provisions. Most

of those who supported the regulation (69 percent, consisting of 766 individuals or organizations with sectarian affiliation and 259 other respondents) agreed with the regulatory provisions which emphasize parents' choice of child care providers, while 170 others (12 percent) believed that the regulations put too much emphasis on parental choice (for further discussion, please see "Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities").

Two hundred ninety-one of those who commented (20 percent) asked that requirements for health and safety be strengthened, and 103 commenters (7 percent) were in favor of more stringent registration requirements for providers. Other commenters requested that we give examples of more stringent health and safety requirements in the preamble. On the other hand, 152 commenters (10 percent) urged us to prohibit or minimize health and safety requirements. Over half of the respondents (54 percent) thought that stringent health and safety requirements and additional regulatory requirements could have the effect of eliminating small family child care providers and relatives from the program. In order to permit additional emphasis on quality, 381 commenters (26 percent) requested an increase of the percentage of funding for availability and quality improvement activities in the 75 percent "services" portion of the Block Grant. Many of these commenters specified that this portion of the Block Grant should be targeted at quality, rather than administrative activities. Some believed that there should not be any regulatory limits on the amount of funds that could be spent on quality activities. One hundred twenty-nine of those who commented thought the allowance was sufficient and should not be changed, and four commenters wanted a decrease in the administrative allowance.

Although a few commenters (3 percent) expressed support for the level of flexibility given to States, 20 percent of the commenters (295) were dissatisfied with what they saw as a lack of State flexibility and authority over the Block Grant funds. Of particular concern to some commenters, including 28 States and State Legislators, were the constraints on the use of the 75 percent portion of the Block Grant funds. The comments are discussed in the applicable regulatory sections.

Use of Interim Final Rule

The Administrative Procedure Act provides that an agency can issue an

interim final rule "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)). ACF found that a Notice of Proposed Rulemaking (NPRM) would have been impracticable for the Block Grant, due to the time constraints involved and the need for Grantees to have complete approved Plans before implementing their programs. Congress allowed only ten months between the passage of the Act and the availability of the appropriation, and thus the start of the program. Grantees needed much of that time to develop their Plans, to hold public hearings, and to submit their Plans to ACF with sufficient lead time for approval. The remaining time was insufficient to determine Federal administration of the program, draft an NPRM, allow review of the NPRM by applicable Federal entities, publish the NPRM, allow for a comment period, consider comments, revise the NPRM and publish a final rule. In addition, we believe there was a need for a rule before Plans were submitted in order to establish the funding formulas for the Territorial and Tribal Grantees.

Comment: Several commenters objected to the use of an interim final rule because they believed it limited the opportunity for Grantees to comment on the rule. In particular, one commenter complained that in the past Federal agencies have kept interim final rules in effect for substantial periods, thereby avoiding consideration of comments.

Response: For the reasons given above and explained more fully in the preamble to the interim final rule, we believed that use of an NPRM was impracticable for the Child Care and Development Block Grant regulation. Although we decided an interim final rule was necessary, we still invited and expected comment on the rule. We have carefully considered and responded to those comments in drafting this final rule.

Comment: One commenter stated that Grantees should be allowed to submit revisions to their Plans to reflect the final rule.

Response: Grantees may amend their Plans at any time, in accordance with the procedures described in § 98.18. If amendments to a Grantee's Plan are necessary or desired due to requirements of this final rule, Grantees must use that procedure to amend their Plans. Any changes required by these regulations will require changes to the Block Grant Plan. We will give Grantees a reasonable amount of time to submit and make changes.

Introduction

The following purposes guided the development of this rule:

- To include in the regulation all information necessary to allow the reader to understand all statutory and regulatory requirements;
- To provide the basis for applicants (States, Territories, and Indian Tribes) to prepare Child Care and Development Block Grant Applications and Plans;
- To establish the foundation for Federal oversight and administration of the Block Grant;
- To ensure that Grantees meet statutory objectives as they design and implement child care and related programs;
- To provide broad flexibility to Grantees in designing and administering programs under the Block Grant, within the constraints of the Act; and
- To reflect comments from concerned and interested parties who participated in the regulatory process.

By its very nature, a block grant provides great flexibility in program design. Although ACF does not expect uniformity in programs from State to State, we are concerned that the outcomes specified in the legislation (listed below) be achieved in all programs funded under the Child Care and Development Block Grant. In this rule, we have attempted to achieve a balance between providing Grantees broad flexibility in program administration and ensuring that these outcomes are achieved. While we do not expect that all interested parties will agree with every provision of this regulation, in reviewing this package, readers should bear in mind the many compromises and competing goals embodied in the legislation.

Programs funded under the Child Care and Development Block Grant should seek to achieve a balance among the numerous outcomes specified in the legislation. These include:

- Maximizing parental choice through the use of both certificates and contracted child care services, to include a broad range of child care providers, including center-based care, family child care, in-home care, and care provided by relatives and sectarian organizations;
- Providing quality child care that meets applicable State and local requirements;
- Coordinating planning and delivery of services at Federal, State and local levels;
- Providing flexibility of program design to ensure that recipient needs are met;

- Ensuring that the preponderance of funds is used to provide child care services, and therefore minimizing non-service expenditures;

- Increasing the availability of child care services, including early childhood development and before- and after-school care;

- Assuring responsible program administration, through which statutory requirements are met and adequate information regarding the use of public funds is provided; and

- Maximizing the impact of the additional funding available under the Block Grant by assuring that funding supplements, not supplants, funding for existing services.

In addition, we believe that programs should, to the maximum extent possible, provide seamless services to the families and providers which participate. To the extent permitted by applicable statute, a family should be able to retain the same provider regardless of the source of funding (e.g., title IV-A or XX of the Social Security Act, or under this Block Grant) and that providers should be able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

Subpart A—Purposes and Definitions

Purposes (Section 98.1 of the Regulations)

This section of the regulations lists the purposes of the Block Grant and is based on the purposes given in the Conference Report. In addition, this section also lists the specific purposes of these regulations, as described in the introduction to this preamble.

Comment: One organization noted that the rule seems to treat sectarian providers as a separate category, when the organization thought they were merely a subset of center-based providers. The organization believed this creates the impression that the Government favors sectarian child care providers, rather than just identifying sectarian providers as a separate category of care. It suggested changing the reference to sectarian providers in the purpose section to read: "a broad range of child care providers, including center-based (nonsectarian and sectarian), family child-care, and in-home care and care provided by relatives."

Response: Sectarian organizations are not a category of care in the regulation; rather, like relatives, sectarian providers are a type of provider in many categories of care. Group home and family child care providers, as well as

center-based providers, can be sectarian. The reason for specifically discussing sectarian organizations as child care providers is that the Conference Report specifically mentions them as one of the types of providers which should be available to parents. In addition, section 658N(b) specifically provides that no provision of State law shall prevent the expenditure of Federal Child Care Block Grant funds in or by a sectarian organization. The regulations do not advantage sectarian organizations as child care providers, but merely make it clear they are to be included as one of the types of providers available to parents. Our emphasis is to ensure that such providers are an option for parents, particularly in areas where sectarian organizations had not previously provided care through subsidized child care programs.

Definitions (Section 98.2 of the Regulations)

To simplify understanding, we will use the following terms frequently in the discussion of the regulations:

- The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 as codified at 42 U.S.C. 9858;
- ACF* means the Administration for Children and Families;
- The Application* is the request from a potential Grantee for funding under the Block Grant. It includes the amount of funding requested and the projected budget for the program;
- The Assistant Secretary* is the Assistant Secretary for Children and Families;
- The Block Grant* will be used as shorthand for the Child Care and Development Block Grant;
- Block Grant programs* will be used to generically describe all activities under the Block Grant, including child care services and quality and availability improvements pursuant to section 658E(c)(3)(B), as well as quality and availability improvements, pursuant to sections 658E(c)(3)(C), 658G and 658H of the Act;
- Child care services*, for purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;
- The Department* means the Department of Health and Human Services;
- Grantee* means the State, Territorial or Tribal governmental entity to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular

component of the entity is designated in the grant award document;

- The Lead Agency* is the agency designated as responsible for administering the Block Grant for the State, Territory, Tribe, or Tribal organization;
- The Plan* means the Plan for the implementation of programs under the Block Grant;
- The regulation* refers to the actual regulatory text contained in parts 98 and 99;
- The Secretary* is the Secretary of the Department of Health and Human Services;

We have included these definitions in the regulation at § 98.2.

Section 658P of the Act provides definitions for the following terms: Caregiver, child care certificate, elementary school, eligible child, eligible child care provider, family child care provider, Indian Tribe, parent, secondary school, sliding fee scale, State, and Tribal organization. We have included these definitions in this section of the regulation.

Although not included in the Act, we have added definitions of "program period," "obligation period," and "liquidation period" to help clarify responsibilities of Grantees regarding expenditure of funds and reporting.

Types of Assistance

The regulation specifically recognizes the distinction between types of assistance under the Act. The Act distinguishes between certificates, on the one hand, and grants, contracts, and loans on the other. Both types of aid are considered assistance provided under the Block Grant. However, the Act's terminology and structure reflect a distinction between certificates, which are deemed to be assistance to parents, and grants, contracts, and loans, which are treated as assistance to providers. Thus, for example, sections 658E(c)(2) (E) and (F) of the Act require Grantees to provide assurances concerning any applicable licensing and regulatory requirements and concerning health and safety requirements applicable to child care providers who provide services for which assistance is made available under the Act. This formulation was used to ensure that such requirements were triggered, not only by assistance to providers, i.e., grants, contracts and loans, but also by assistance to parents, i.e., certificates. By contrast, the provisions of section 658N of the Act relating to nondiscrimination in employment and admissions on the basis of religion apply for the most part to "[a] child care provider * * * that receives assistance under this

subchapter." Thus, such requirements are only triggered by assistance to the provider in the form of grants, contracts, and loans.

The above distinction, which we have followed in the structure and terminology of the regulations, reflects the compromise embodied in the Act between licensing and regulatory requirements and health and safety requirements, on the one hand, and religious nondiscrimination and nonsectarian use requirements, on the other. Although the Act requires all providers to comply with the former, providers which accept only certificates need comply with the latter only when 80 percent or more of their operating budget is governmental, as discussed in §§ 98.46 and 98.47. This distinction follows the Act by providing parental choice of sectarian providers and by protecting the religious autonomy of such providers.

Comment: Some groups stated that there is no basis in the statute for the separate provisions which define certificates as assistance to the parent and grants and contracts as assistance to child care providers. These groups believe certificates, grants and contracts are all assistance to parents.

Response: Although all assistance under the Block Grant indirectly benefits both parents and providers, the Act's terminology and structure reflect a distinction between certificates and grants, contracts and loans. For example, as stated in the Introduction, sections 658E(c)(2) (E) and (F) of the Act require Grantees to provide assurances concerning any applicable licensing and regulatory requirements and concerning health and safety requirements applicable to child care providers that "provide services for which assistance is made available under this subchapter." This formulation was used to ensure that such requirements were triggered not only by assistance to providers, i.e., grants and contracts, but also by assistance to parents, i.e., certificates. By contrast, the provisions of section 658N of the Act relating to nondiscrimination in employment and admissions on the basis of religion apply for the most part to "[a] child care provider * * * that receives assistance under this subchapter." Thus, such requirements are only triggered by assistance to the provider in the form of grants, contracts, or loans.

Providers

To clarify the child care providers that may provide child care services, the regulations include definitions for center-based child care provider, group

home child care provider, family child care provider, and in-home provider. Consistent with the definition in the Act for "family child care provider," we use broad, generally-accepted definitions for these terms. We also define categories of care (i.e., center-based, group home, family child care and in-home) and types of providers (e.g., non-profit, for profit, sectarian and care by relatives). These definitions are also consistent with the definitions used in other ACF child care programs.

We distinguish between "caregiver," which is defined in the Act, and "provider." The Act defines "caregiver" as the individual actually providing child care services to a child, while we define "provider" as the entity providing child care services. An individual may be both the caregiver and the provider (i.e., in the case of a family child care provider or an in-home child care provider). Group home child care providers and center-based child care providers may employ a number of caregivers.

We have also included definitions for early childhood development programs and before- and after-school programs. For purposes of the Block Grant, these programs are defined as those which meet the regulatory requirements in § 98.51.

Comment: One group wanted relative care to be added as a fifth category of care with a separate market rate to determine payment. They thought that States should be free to establish payment rates based on a market rate or other proven methodology.

Response: Our definition of categories of care is based on the physical setting in which care occurs, not on the type of provider. A relative can provide center-based care, group home child care, family child care or in-home child care. We require that rates be based upon the setting (category) of care and not on the type of provider. However, as discussed in more detail in § 98.44, we have revised the regulation regarding payment rates to allow different rates within categories of care if Grantees can show that the different rates are based on actual market conditions.

Comment: Several groups proposed revisions to the definition of relative. One proposed adding "and adult siblings"; another suggested the addition of emancipated siblings. A third group believed that the definition of relative child care provider should be left open for the Grantee to define.

Response: The limitation on the definition of the term relative in § 98.2(q) to grandparents, aunts, and uncles is statutory and relates only to those relatives who may be exempted

from health and safety standards. It does not define which relatives can provide care. Any provider, relative or non-relative, who meets the health and safety requirements and any applicable standards is an eligible provider. For the purposes of the Block Grant, relatives other than those included in the definition at § 98.2(q) are treated as any other eligible provider in that category of care. For example, a child's cousin who cares for a child in the cousin's home would be a family child care provider and would need to meet any requirements for that category of care. As previously discussed, it is only for the purposes of meeting health and safety standards that certain relatives are treated differently. The Act and regulations allow Grantees the option to exempt grandparents, aunts and uncles from health and safety requirements.

Comment: One State noted that a minimum caregiver age of 18 is cited only for grandparents, aunts or uncles. That State further noted that there is no age requirement cited for title IV-A child care programs. It recommended that the minimum age for child care providers should be 18, or that States should have the discretion to define a minimum age requirement.

Response: The Act specifies a minimum age of 18 for grandparents, aunts and uncles, but only in terms related to exempting such relatives from health and safety requirements. Grantees have the discretion to set age limits for all providers, including relatives, as part of their health and safety requirements or their licensing and regulatory requirements.

Comment: Several groups commented on the definition of "family child care provider." One State believes that the definition should be based on the number of children in care rather than the number of caregivers providing care for children; it proposed deferring to the Grantee for the definition of family child care provider. One commenter suggested that the maximum number of children in care should be specified by the Grantee, according to local regulations. A few commenters thought the phrase "as sole caregiver" in the definition of family child care provider was unnecessarily narrow in scope and should be removed. One State noted that it allows substitutes to be identified as family day care providers and thus may allow more than "one individual" to provide care. Another State requires assistant caregivers under certain circumstances.

Response: The definition of family child care provider is statutory. We interpret the phrase "sole caregiver" to mean the number of caregivers at one

time. It is not intended to preclude a substitute in the absence of the regular caregiver. As the statutory definition does not specify the number of children in care, this is up to the Grantee. However, in cases where the Grantee requires a second caregiver, for purposes of the Child Care Block Grant, the category of care would be group home child care provider.

Comment: Two States requested that the phrase "for fewer than 24 hours per day" be deleted from the definition. One State cited instances when child care would be required for more than 24 hours a day but the situation would not be appropriate for foster care or institutionalization of any type. The other State requested that time parameters be determined by State and local requirements. Several Tribes requested clarification on the meaning of the phrase.

Response: The reference to "for fewer than 24 hours per day" is part of the statutory definition for family child care provider. However, we believe that the purpose of the phrase is to distinguish child care from foster care or institutional care. Thus, we give Grantees the option to allow providers to care for children for more than 24 consecutive hours due to the nature of the parent's work, as long as such care is actually child care, not "institutional" services. Examples of such work, as given by commenters, include fire fighters on a 48-hour shift, nurses on duty 36 hours, or Alaskan natives who are away fishing for two weeks. To pay for more than 24 hours of care, the child care must be for a known, temporary period as required by the nature of the parent's work. We have amended the provider definitions accordingly.

Comment: One State recommended the deletion of the phrase "in a private residence other than the child's residence." In this State, State law allows for such care to be provided in the child's home, as well as other private residences.

Response: For purposes of the Block Grant, the definition of family child care provider includes only care in a private residence other than the child's residence. Care can occur in the child's residence, but then the setting is defined as in-home care. However, Grantee requirements and payment rates for in-home care might be the same as for other care, such as family child care.

Comment: One group recommended that the definition of family child care provider be amended to include care given in a child's home when other children are also in care.

Response: As discussed in more detail in § 98.20, we do not believe that the Block Grant allows for payment to parents to care for their own children.

Comment: Another group recommended that the definition of in-home child care provider be restricted to caregivers providing care only to children who reside in the home.

Response: The situation above appears to relate to parents providing care for their own children, as well as other children. Block Grant funds are not available for parents caring for their own children. The care would be considered family child care for the other children.

Comment: One group thought that the maximum number of children in care with a group home child care provider should be determined by the Grantee, according to local regulations.

Response: The Grantee determines the maximum number of children permitted in care with a group home child care provider.

Comment: One State thought that the provision of two adults to care for children in group home care constituted a standard as opposed to a definition. The State suggested that if there is a need to include the number of caregivers in the definition, it should be phrased "usually two or more individuals."

Response: We do not believe we have created a standard; rather, we have used the number of caregivers to distinguish between family child care and group home child care. We consider one caregiver in a private residence to be a family child care provider and more than one caregiver in a private residence to be a group home child care provider. The number of caregivers necessary to meet any applicable child-staff requirements is determined by the Grantee.

Comment: One State said that it did not distinguish between family and group home child care settings, only between family child care and center-based child care. By setting definitions that would be applicable across all States, the regulations may create confusion or establish parameters that are incompatible with State practices. This policy would lead to the distortion of State compliance issues, in some instances. Another State found our requirement for group home child care provider as "two or more individuals who provide child care services" to be inconsistent with the Grantee's current requirements.

Response: The definitions of categories of care serve to provide a basis for distinguishing between child care settings, as required, in establishing payment rates pursuant to section

658E(c)(4) of the Act. However, Grantee payment rates and requirements might be the same for one category as for another; for example, requirements and payment rates might be the same for group home care and family child care.

Indian Tribe and Tribal Organization

Our definitions for "Indian Tribe" and "Tribal organization" correct the citations given in the Act for the Indian Self-Determination and Education Assistance Act. The correct citation for "Indian Tribe" is section 4(e) of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b(e)). Also, the reference for "Tribal organization" is corrected as section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)). Additionally, we have added language to the definition of Tribal organization to explicitly include consortia as Tribal organizations. We believe that this is consistent with the intent of the definition found at 25 U.S.C. 450b(l).

Sectarian Organization

The definitions also clarify that a "sectarian organization" or "sectarian child care provider" means religious organizations and providers generally, not merely those of a specific religious character. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content. As we understand it, the term "sectarian organization" as used in the Act was not based upon, or limited by, the concept of "pervasively sectarian" settings found in some judicial decisions.

Comment: Many commenters suggested changes to the definition of sectarian organization or sectarian child care provider. One organization was concerned that there was ambiguity in the definition of a sectarian organization which would allow for a broad interpretation. This group wanted the definition to be narrowed to ensure that payment is made only to "bona-fide churches." Others thought that limiting sectarian organizations to those which are tax-exempt would help the lead agency determine eligible sectarian organizations. One group recommended we use language similar to that used by the U.S. Department of Justice in the recent final rule for the The Americans With Disabilities Act at 28 CFR 36.104 defining a religious entity as "a religious

organization, including a place of worship." Another group noted that the definition in the interim final rule was interreligiously insensitive since it references non-affiliation with a church or synagogue, which applies mainly to Christians and Jews but would not apply to other religions.

Response: As stated in the preamble to the interim final rule, we believe that "sectarian organizations" as used in the Act was not based upon, or limited by, the concept of "pervasively sectarian" found in some judicial decisions. We believe the term was meant broadly, and we reflected this in the definition. We therefore have not narrowed it. We considered the definition used by the Department of Justice for the Americans with Disabilities Act, but we found that it did not sufficiently describe a religious organization for the purposes of the Block Grant. We agree with the commenter who suggested our definition was interreligiously insensitive and have revised it to eliminate the reference to church or synagogue.

Administration

Comment: One organization suggested that we define State administrative costs.

Response: Administration is discussed in § 98.52(b). We have not provided a specific definition because this might unnecessarily limit expenditures. The limitation under the 75 percent portion of the Block Grant includes funding for all activities (including administration and quality and availability improvements) other than direct child care services, which we have now defined. Thus, the limitation on administration under this portion of the Block Grant does not require a specific definition to distinguish it from quality and availability activities.

Certificates

Comment: One group thought that the definition of certificates should be clarified as follows: "may be a check or other disbursement or issuance with value."

Response: Child care certificate is defined in section 658P(2) of the Act. We believe the use of "check or other disbursement," which comes from the Act, is sufficiently broad to include "issuance with value" and therefore have not revised the regulation.

Comment: Another group recommended that all references to certificates should stress the idea of handing over a document (e.g., voucher, or restricted redeemable coupon) with a dollar value directly to parents, who in turn use it in making an independent

and individual choice of a provider of care for their children. This suggestion would distinguish certificates from contracts and minimize direct State/provider relationships, preserve the free and independent choice of parents, and avoid constitutional issues.

Response: As discussed in § 98.30 of this preamble, we have given Grantees maximum flexibility in defining the form and content of "certificates," provided that the program meets statutory and regulatory requirements. Factors including ease of administration, prevention of fraud and abuse, parental discretion, and provider acceptance must be considered, so long as the form and content ensures that the certificate is considered assistance to the parent and not the provider. Giving cash or a check directly to a parent is not the only way to ensure maximum parental choice. Moreover, reimbursing the provider, after verification that care was provided, helps prevent fraud and abuse. Each Grantee is in the best position to determine how such factors should be balanced in establishing a certificate and payment system.

Eligible Child

Comment: A number of commenters thought that parents of foster children should be considered parents for purposes of the Block Grant. One organization noted that in some States when a child is placed in foster care, the foster parent is considered neither the legal guardian nor someone who is acting *in loco parentis*. Rather, it is the State, instead of the foster parent, that is considered to be *in loco parentis*. In such States, the narrow meaning given to *in loco parentis* would preclude the foster parent from establishing eligibility for a child placed in his or her care. This organization suggested we clarify that foster parents may be considered *in loco parentis* for purposes of establishing eligibility.

Response: A State can define "or other person standing *in loco parentis*" to include foster parents. This definition of *in loco parentis* can be specific to the Block Grant. There is no basis for a regulatory definition that specifically requires the inclusion of foster parents.

We note here that for purposes of this program, there is a basic distinction between protective services cases and foster care cases. In the former cases, the child continues to live with the parent(s). In the latter cases, a court has placed the child in the custody of someone other than the natural parent(s).

In protective services cases, eligibility is based on the fact that the family is receiving, or needs to receive, some type

of protective service, such as counseling. The parent need not be working, or in training or education. In foster care cases, the foster parent must be working or in education or training for the family to qualify for child care services. Other factors, such as counting income for foster care and protective services cases, are discussed in the appropriate sections of this preamble.

Effect on State Law (Section 98.3 of the Regulations)

Section 658N(b) of the Act contains language relating to the effect of the Act on State law, as well as the effect of State law on expenditures under the Block Grant. We have included this language in § 98.3 of the regulations.

This section provides that nothing in the Act supersedes or modifies any provision of a State constitution or State law prohibiting the expenditure of public funds in or by sectarian institutions, except as provided below. We have included language which similarly restricts the effect of the regulations.

In some States, provisions of the State constitution or State law prohibit expenditure of public funds in or by sectarian institutions. Under the Block Grant, States are not required to provide matching funds, and the costs of State administration are an allowable expenditure. Thus, all activities under the Block Grant can be carried out using only Federal funds. Because no State funds are required to operate the Block Grant, under the Act, provisions of a State constitution or State law that would preclude a State from participating in the Block Grant program (or from complying with its requirements) because State funds would be used in or by sectarian institutions do not apply.

Thus, section 658N(b) of the Act makes clear that no provision of a State constitution or State law can be construed to define "public funds" to include Federal funds provided under the Block Grant. Therefore, provisions of State constitutions or State laws that preclude expenditure of public funds in or by sectarian institutions do not apply to Block Grant funds and may not be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under the Act. This provision requires States to segregate State and Federal funds, if necessary, to ensure that a State constitution or law does not prevent Federal Block Grant funds from being expended for the purposes provided in the Act, without limitation.

Comment: We received six comments that referred specifically to this section

of the interim final rule. Three commenters were supportive of the language of this section. One of these commenters reported that, in the past, State officials had argued that Federal funds administered by the State are subject to State rules precluding access to public funds by religious providers. Other commenters, including an organization representing State legislators, expressed concern that this provision violates State constitutions. A number of other commenters did not specifically reference this section of the regulation, yet expressed the opinion that it was not appropriate to use public funds for sectarian purposes.

Response: It is clear that this statutory provision was included to ensure that the situation described above (i.e., precluding funds received through certificates from being used with and by sectarian providers) would not occur. Congressional intent is clear on this issue—Block Grant funds must be made available to a broad range of providers, including sectarian organizations, regardless of State rules that preclude the use of State funds for such purposes.

The language of the regulation at § 98.3 very closely follows the applicable statutory language. Disagreement regarding the result (that States must permit expenditure of Block Grant funds for care from sectarian providers) is not a regulatory issue. The additional language of the regulation suggesting that States segregate funds, if necessary, was added to allow for a method of assuring that the intent of the Act is met, even if State law or constitution would otherwise preclude this from occurring.

As with the other provisions of the regulations, unless otherwise specified, these provisions apply to Indian Tribes and Territories.

Subpart B—General Application Procedures

Lead Agency Responsibilities (section 98.10 of the Regulations)

The regulations follow the statutory language at section 658D(b) of the Act in setting out specific responsibilities of the lead agency. First, they require that the chief executive officer of the State designate an appropriate State agency as the lead agency. Second, they require that the lead agency administer Block Grant funds, submit the Plan, hold at least one public hearing and coordinate Block Grant services with other child care and development programs.

In addition, the regulations elaborate on the statutory provisions in clarifying that:

(1) In the case of programs to be operated by Tribal Grantees, the appropriate Tribal leader (rather than the chief executive officer of the State) would designate the lead agency;

(2) The lead agency must submit the Application for funding required under § 98.13, as well as the Plan; and

(3) The lead agency must coordinate with programs for the benefit of Indian children as well as other Federal, State or local programs.

The Act and regulations also allow the lead agency to share administrative responsibilities with other State agencies. However, as provided in § 98.11, the lead agency must maintain overall responsibility for the program. If other State and local agencies share administration of the program (or individual program activities), they must operate according to rules established by the lead agency. As specified in § 98.11, such rules must include the policies, the types of activities or services to be provided, and all rules and regulations governing the administration of the program.

In addition, the lead agency has the flexibility to contract with local public or private agencies to implement the Block Grant program. As with the sharing of administrative responsibility with other State agencies, the lead agency must maintain overall administrative responsibility for the program pursuant to § 98.11. We believe the authority to share implementation will facilitate coordination with other child care and development programs, which may be locally implemented or community based, and will enable Grantees to utilize the most effective and efficient administrative structures available.

Comment: One State pointed out that the State legislature has designated a single State agency, which is headed by a separate publicly-elected official, to administer all child care programs. As a consequence, the lead agency is independent of the chief executive officer of the State. The State requests that the regulations be revised to recognize this situation.

Response: While we recognize the State's concern, the situation is not one that can be resolved by Federal regulation. The requirements for the chief executive officer of the State, in the situation described by the commenter, remain unchanged, namely to make the Application for funding and to designate a lead agency, whether by his/her independent decision or by legislative mandate. The responsibilities of the lead agency remain unchanged, namely to implement the Block Grant

program in compliance with the regulations and the Act.

Comment: One organization pointed out that the intent of holding public hearings is to allow for public participation in the development of the Plan and suggested that § 98.10(d) be amended to read "Hold at least one public hearing a year during the first three years of operation in order to incorporate community recommendations into the evolving program."

Response: We do not believe the regulations should require the lead agency to hold additional hearings. The regulation parallels the statutory language, which requires that the lead agency hold at least one public hearing in conjunction with the development of the Plan. The initial Plan submitted by States and Territories will cover a period of three years and the initial Tribal Plans will cover a period of two years (see § 98.17). The public is therefore afforded the opportunity to participate in the development of the Plan. However, neither the Act nor the regulation precludes the lead agency from holding more frequent public hearings. We encourage Grantees to hold a number of hearings sufficient to allow affected individuals the opportunity to make meaningful comment.

Administration Under Contracts and Agreements (Section 98.11 of the Regulations)

Grantees are given broad administrative flexibility under the regulations at § 98.10(a). However, this flexibility could make it more difficult to maintain accountability for the expenditure of funds and for meeting the requirements of the program. It could also greatly complicate the ability of both the Grantee and ACF to meet their respective oversight responsibilities. To protect against these risks, we are setting certain minimal requirements for the sharing of administrative or implementation responsibilities by the lead agency. Thus, we require that when administration of the Block Grant program is shared by other State agencies, or the implementation is shared with local public or private agencies, the process must be governed by written agreements or contracts which specify the roles and responsibilities of the respective agencies. We believe it would be impossible for the lead agency to satisfy the assurances in the Plan without such written agreements.

We require that the lead agency retain overall responsibility for the administration of the program and serve

as the single point of contact in resolving program issues related to the Grantee's Block Grant program. Under these requirements, the lead agency must retain responsibility not only for conducting the activities specified in paragraphs (b), (c), (d) and (e) of § 98.10, but also for such functions as: (1) determining the basic usage and priorities for the expenditure of Block Grant funds; (2) promulgating all rules and regulations which govern the administration of the Plan; (3) submitting all reports required by the Secretary; (4) ensuring that the program complies with the approved Plan and all Federal requirements; (5) overseeing the expenditure of funds by subgrantees and contractors; (6) monitoring programs and services; and (7) fulfilling the Grantee's responsibilities in any disallowance under subpart G; complaint, compliance or hearing action under subpart J; or hearing and appeal action under part 99. We have added language regarding disallowance to the final rule.

We have added a section (b)(8) which specifies that any agency or contractor which shares administrative responsibility for the program must operate according to the rules established for the program. For example, a local resource and referral agency responsible for administering the program at a local level must satisfy all regulatory requirements, such as providing consumer education, and is subject to restrictions against use of funds for lobbying.

Comment: One State requested that the regulation be amended to clarify that the laws and regulations governing the relationship between a State-supervised and locally administered agency meet the definition of written agreement for purposes of this section.

Response: An acceptable written agreement is any written document which establishes that the lead agency retains overall responsibility for the administration of the program, delineates the roles and responsibilities of the agencies involved, and specifies the rules under which the program must be operated. Such written agreement could take the form of a memorandum of understanding or a contract. The laws and regulations which govern a State-supervised/locally administered agency could provide the detail for an acceptable written agreement, if they specifically delineate the roles and responsibilities of the agencies involved and if they specify rules for program operation. These laws and regulations could therefore be incorporated by reference into a letter or other written

document between the agencies agreeing to share administration. Thus, we believe the regulation is broad enough to cover this particular situation and therefore have not amended it.

Comment: One agency stated that the regulation provided important clarification about how States can administer Block Grant programs, in coordination with other programs, and recommended that this section remain unchanged. However, another agency recommended that the phrase in paragraph (b)(2) "which are in effect on a statewide basis" be deleted because the overall coordinating responsibility of the lead agency must be sustained even when it contractually shares responsibilities for program implementation with other agencies.

Response: We have amended the language in paragraph (b)(2) of this section.

Comment: One agency recommended that to conform with the intent of Congress and to avoid potential conflicts of interest, the second sentence in § 98.11(a) should be amended to read: "In addition, the lead agency can share implementation of the program with other public or private not-for-profit agencies."

Response: We do not believe that it is necessary to preclude agencies other than public or private not-for-profit agencies from participating in local administration of Block Grant programs. Reasonable caution and oversight should be exercised when giving administrative responsibilities to non-governmental agencies, including private not-for-profit agencies.

Coordination and Consultation (Section 98.12 of the Regulation)

Pursuant to section 658D(b)(1)(D) of the Act, the lead agency must coordinate the provision of Block Grant services with other Federal, State and local child care and early childhood development programs. As required in § 98.14, the lead agency must also consult with appropriate representatives of units of general purpose local government in developing the Plan. Such consultations may include, but are not limited to, consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this part can be used effectively to address local shortages.

We believe that coordination in planning and delivery of services is essential in order to prevent duplication, to ensure that child care services are available to the maximum number of eligible families, and to provide a viable

range of child care options for parents. In designing programs, administrators should also consider existing service delivery networks. Coordinating with existing child welfare services, early childhood development programs, educational systems, and others will help ensure that the varying needs of children and families are met.

As indicated in the Introduction, one goal of a coordinated service delivery system is to create seamless service. Seamless service means providing eligible parents access to and payment for child care services and programs which respond to the parents' child care needs, even as eligibility changes over time; services are provided without the necessity of changing the child care provider. In addition, such a coordinated service delivery system could create a complete day of service for an eligible child when programs do not last for the entire day (e.g., child care services before and after a Head Start class).

A fully coordinated service delivery system would include, to the extent possible, common payment rates, common definitions of sliding fee structures, common contracting methods, and common payment, with other child care services funded under title IV-A and other funding sources. (Child care programs under title IV-A of the Social Security Act include Transitional Child Care, At-Risk Child Care and AFDC Child Care offered to working AFDC recipients and participants in JOBS or other approved education and training.) Definitions, administrative procedures, and provider eligibility rules which are as consistent as possible should ease the administrative burden on the State, local and Tribal organizations. The delivery system should also enable smooth transitions for families as their situations change over time.

This section also addresses the coordination required between States and Tribal Grantees. Section 658O(c)(2)(A) of the Act requires that Tribal applicants coordinate to the maximum extent feasible with the lead agency in the State or States in which the applicant will carry out the Block Grant. We have added a complementary State requirement. We believe that this requirement is necessary to ensure State/Tribal coordination of services. We believe that such coordination is also necessitated by the statutory requirement at section 658O(c)(5) of the Act and § 98.80(d) which provides that Indian children have dual eligibility for State and Tribal programs. Specifically, we expect States and Tribes to share information regarding eligibility requirements relative to family income.

These eligibility requirements apply to Indian children, as discussed in the preamble at § 98.80.

Finally, since Grantees are required to review their budgets and submit Applications annually (or less frequently, as specified by the Secretary; see § 98.13(b)), we expect the coordination specified in this section to be carried out on an ongoing, rather than a one-time, basis.

Comment: One agency commended the regulation for encouraging interagency coordination that would achieve the goal of families receiving seamless service. However, another agency, while agreeing that interagency coordination should be pursued, cautioned that the State's efforts to coordinate services should not result in the establishment of new child care bureaucracies. The commenter further stated that the coordination effort should not serve as a basis for establishing family resource centers on the premises of public schools.

Response: There is no basis for precluding Grantees from establishing whatever administrative structure is determined appropriate to meet Grantee needs, both at the State and local level. However, Grantee expenditures for program administration are subject to the expenditure limitations in § 98.50.

Application Content and Procedures (Section 98.13 of the Regulations)

In accordance with section 658E of the Act, we require those wishing to obtain Block Grant funds to submit an Application and a Plan.

The Application will include the following:

- (1) The program period, as defined in § 98.2(cc), for which the Application is made;
- (2) The amount of funds requested for such period;
- (3) An assurance that the Grantee will comply with the requirements of the Act and the regulations;
- (4) Pursuant to 45 CFR part 93, Standard Form LLL (SF-LLL) which assures that the funds will not be used for lobbying purposes (Tribal applicants are not required to submit this form);
- (5) Pursuant to 45 CFR 76.600, an assurance (including any required forms) that the Grantee provides a drug-free workplace;
- (6) A budget of expenditures, which provides an estimate of the use and distribution of Block Grant funds during the period covered by the Application, including:
 - (i) A break-out of program activities under § 98.50 including a list of activities to improve the availability and quality

of child care and administrative costs the Grantee anticipates will be necessary to carry out § 98.50;

(ii) A detailed explanation, including appropriate documentation, of expenditures for operation of the certificate program and related consumer education which equal or exceed ten percent of the funds under § 98.50, if the Grantee requests approval to expend funds for non-service activities in excess of ten percent, pursuant to § 98.50(d)(3); and

(iii) A break-out of program activities under § 98.51 including administrative costs which the Grantee anticipates will be necessary to carry out § 98.51;

(7) Pursuant to 45 CFR 76.500, certification that no principals have been debarred;

(8) The amounts of Federal, State, and local public funds expended for the support of child care and related programs during a base period (for the initial Application or first application after publication of this final rule), such expenditures for subsequent periods (in subsequent Applications), and, if applicable, information regarding the nature, extent, and the basis for reductions in Federal expenditures for programs other than the Block Grant, pursuant to § 98.53. If applicable, Tribal Grantees should include the basis for reductions in State expenditures for programs other than the Block Grant, pursuant to § 98.53. The amended requirement for separate aggregates by level of government is discussed at § 98.53 of the preamble;

(9) Assurances that the Grantee will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended). These assurances are required by those regulations for all applicants for Federal financial assistance;

(10) The Block Grant Plan, at times and in such manner as required in § 98.17; and

(11) Such other information as specified by the Secretary.

We do not believe that providing the Application information will be unduly burdensome. We believe that Grantees, in setting the goals and objectives of the program and in determining how to achieve them, must consider allocation of funds, as well as the program and administrative activities that will be undertaken. Moreover, pursuant to

section 658K(a)(1) of the Act, Grantees must provide information on the use and distribution of funds at the end of the program period. The information we require will not only be used to monitor the program but can also be used in reports to Congressional committees and to provide models for other Grantees. Because we know that budget data are preliminary, we are not requiring their inclusion in the Block Grant Plan; thus, the budget data will not be subject to the compliance process.

The requirements on lobbying, drug-free workplace, and debarment of principals which we included are not cited in the Act but are required under other Federal laws and regulations. Likewise, the requirements regarding nondiscrimination on the basis of race, color, national origin, sex, age and disability are required under other Federal laws and regulations, as listed in (a)(9) of this section. Under those regulations it is clear that grants, contracts and loans are Federal financial assistance. We have requested information on the issue of certificates as Federal assistance from relevant sources and will provide guidance to Grantees in the near future. We will include the nondiscrimination assurance forms with the Application information for FY 1992 grants.

We also required other information which we believe is essential in our administration of the program (e.g., the amount of funds requested and current expenditures for child care and related services). Finally, we added language requiring Grantees to comply with the regulations, as well as with the Act.

The Block Grant Plan must accompany the initial Application. Thereafter, the Block Grant Plan need only accompany the Application if a new Plan is required, pursuant to § 98.17.

Although we did not receive any comments on the interim final rule requirement of annual Application submittals, we have reconsidered this requirement. It is possible that at some time in the future, we may require Applications to be submitted only at such time as the Block Grant Plan is submitted. However, for the present, we will continue to require annual submittals in order to more closely monitor program activities and to provide the data in timely reports to Congress. We have added language to § 98.13(b) to allow for changes in this requirement in the future.

There is no requirement that an Application for or approval of FY 1991 funding is necessary for subsequent funding. That is, a State, Territory or

Tribe which did not apply for FY 1991 funding would nevertheless be potentially eligible for Block Grant funds in future fiscal years. It is expected that Applications for FY 1992 funding will be required in August, 1992. Procedures for submitting Applications will be specified in future guidance.

Comment: One commenter requested clarification of the role of the lead agency and the chief executive officer. The commenter found § 98.10, which requires the lead agency to submit the Application for funding, and § 98.13(a), that indicates the application is to be made by the chief executive officer, to be confusing. A State agency suggested that § 98.13(a) be amended by inserting "or by the lead agency when designated by the CEO to make application" at the end of the first sentence.

Response: The regulation follows the language of the Act, which requires the chief executive officer of the State (or the appropriate Tribal leader or applicant) to make the Application for Block Grant funding naming the lead agency and the lead agency to develop and submit the Block Grant Plan. We interpret this to mean that an Application, designating the lead agency, must be signed by the CEO (or the appropriate Tribal leader or applicant) and that the lead agency will submit both the Application and the Block Grant Plan. Unless the designation of the lead agency is changed, the signature of the CEO (or appropriate Tribal leader or applicant) is not required on subsequent Block Grant Applications. It is not appropriate for the lead agency to apply for funding and at the same time designate itself as lead agency.

The Application must accompany the Block Grant Plan whenever a Plan is submitted. In those years not requiring the submittal of a Plan, the Application, with the appropriate signature, should be submitted by the lead agency.

Comment: One commenter suggested that § 98.13(a)(5) be amended to read "Pursuant to 45 CFR 76.600, an assurance that the Grantee provides a drug-free workplace or a statement that such an assurance has already been submitted for all HHS grants." It was pointed out that without such a statement, it would not be known if the lead agency overlooked the requirement or had already submitted the assurance.

Response: We agree and have amended the section.

We received other comments on this section of the regulation relative to requiring criminal background checks, the need for providing specific data on administrative costs, and changing the

data collected for the base period (supplantation). These comments are discussed in sections of the regulation which concern these specific issues, i.e., §§ 98.45, 98.52 and 98.53.

Plan Process (Section 98.14 of the Regulations)

In developing the Plan, section 658D(b) of the Act requires the lead agency to:

- (1) Coordinate the provision of services with Federal, State and local child care and early childhood development programs;
- (2) Consult with appropriate representatives of local governments to consider local child care needs and resources, the effectiveness of existing child care and early childhood development services and the methods by which Block Grant funds can be used to effectively address local child care shortages; and
- (3) Hold at least one hearing to provide an opportunity for the public to comment on the provision of child care services.

Although the Act does not expressly require States to coordinate with Tribal child care and early childhood development programs, we believe that Congress clearly intended for such coordination to occur in States with Tribal programs. We have, therefore, specifically required the lead agency in the State to coordinate its program with programs which provide services which benefit Indian children.

The purpose of the Block Grant is to increase the availability, affordability and quality of child care. To achieve that purpose, we believe it is imperative that the public be afforded the opportunity to comment on the provision of child care services. It is expected that the Grantee will submit the Plan, including descriptions of the intended uses of the Block Grant funds, for public comment. We have included the provision that the potential Grantee must provide adequate notice of the hearing to ensure the greatest attendance possible. Although the Act only requires the lead agency to hold one public hearing, the lead agency may, of course, hold additional public hearings. The opportunity for public comment must be offered before the Plan will be considered complete.

We believe that the coordination and consultation processes and the public hearing are vital to the design of a successful program. Consequently, these activities must be undertaken each time a Plan is to be submitted.

Several comments received on this section of the regulation relate to public

hearings and coordination, and are discussed in §§ 98.10 and 98.12.

Assurances (Section 98.15 of the Regulations)

This section lists all of the Plan assurances required by the Act. We have added one additional assurance—that the Grantee must comply with the provisions of the approved Plan. We believe that this assurance is necessary because section 658I(b)(1) of the Act requires the Secretary to monitor Grantee compliance with its Plan.

Comment: One organization stated that assurances (e) and (o) should be amended to conform to the statutory language.

Response: We agree and have made the minor language changes necessary for these assurances to conform to the statutory language. In addition, we amended assurance (g) to conform with the language in § 98.33 and added assurance (p) in order to conform to the list of assurances contained in the preprint.

We received other comments on this section of the regulation related to specific issues covered by an assurance. These comments are discussed in the appropriate preamble sections.

Plan Provisions (Section 98.16 of the Regulations)

Section 98.16 lists the information we require in the Plan. Grantees are required to provide more information and greater detail than has generally been requested in block grant programs. Authority to do so is contained in section 658E(a) of the Act, which requires a Grantee to submit an Application, which includes the Plan, "at such time and in such manner, and containing such information as the Secretary shall by rule require."

It is clear from reading the Conference Report that Congress intends Grantees to provide explicit information as to the use and distribution of the Block Grant funds (H.R. Rep. 964 at 924, reprinted in 1990 U.S. Code Cong. & Admin. News at 2829). The Conference Report indicates that, to receive funds, an applicant must submit a Plan that includes:

- (1) Local consultation regarding development of the Plan;
- (2) Coordination with existing programs;
- (3) Use of funds for child care services, including early childhood education and before- and after-school care, and for activities related to quality and availability;
- (4) Priority for very low income children and children with special needs; and
- (5) Use of a sliding fee scale.

The Report makes it clear that Congress expects Grantees to include in the Plan all the necessary information to enable the Secretary to assess the program and to determine if the stated purposes of the Block Grant will be achieved.

Consequently, we have required Grantees to include information necessary to assist the Secretary in assessing the program. Grantees are required to provide descriptive statements of those elements that we believe are:

- (1) Essential for program success; and
- (2) Necessary to provide a basis for ACF to monitor the program, as required in section 658I(b)(1) of the Act.

(Section 98.16 of the regulations contains a list of the items to be included in the Plan. Each of the items is discussed in detail in the appropriate preamble section.)

We have developed a preprint (Form ACF-118) which must be used when submitting Block Grant plans. The preprint elicits all of the information required in this section in a standardized format. The standardized format:

- (1) Provides complete program information;
- (2) Provides usable information needed to compile and compare program data; and
- (3) Expedites timely review.

In addition, the preprint will assist and guide Grantees and potential Grantees in submitting the Plan.

Comment: One commenter suggested § 98.16(a) (7)(ii) and (8)(ii) should be amended to read " * * * if such services and activities are not available throughout the entire service area" as this could encompass Tribal areas as well as States.

Response: We agree and have amended these sections.

Comment: One State agency pointed out that to ask for anticipated or expected changes in Block Grant Plans is meaningless, particularly since substantial changes require plan amendments.

Response: Based on our review of Grantee Plans, as well as this comment, we agree and have deleted that provision.

Based on our review of Grantee Plans, the comments received, and changes to the regulations, we have clarified the language in several of the requirements and added several requirements to this section. In addition, we have deleted one requirement. The following is a list of those changes:

- (1) In paragraph (a)(6), we have clarified that protective services should

be defined only when applicable, and *in loco parentis* has been added;

(2) The language in paragraphs (a)(7)(iv) and (a)(8)(iii) has been amended to clarify that the given percentages of funds refer to the overall Block Grant funds;

(3) The language in (a)(7)(vi) and (a)(8)(v) has been amended to clarify Grantees may establish eligibility criteria and priority rules for the receipt of all grants and contracts;

(4) Grantees must specify any conditions which limit access to in-home care;

(5) Grantees must include payment rates and the market-cost basis for payment rates if they do not include differences based on the setting, age of the child and additional costs of providing care for children with special needs in the payment rate schedule;

(6) For payment rates which differentiate payments within categories of care, Grantees must include the market-cost basis and a description of the operation of a single system of child care delivery pursuant to § 98.43(e)(2);

(7) Grantees are no longer required to address anticipated changes in services, activities, or other provisions that are expected over the life of the Plan;

(8) Tribal programs are not subject to paragraph (a)(6)(viii) and prioritization under paragraph (a)(8)(iii) of this section; and

(9) Tribes specified at § 98.83(f) are not subject to the requirements in paragraphs (a)(7)(iv), (a)(8)(iii), and (a)(11) of this section unless the Tribe chooses to include such services, and therefore the associated requirements, in its programs.

Discussion of these specific changes can be found in the appropriate preamble sections. As a consequence of these changes, it was necessary to revise the numbering of this section. We also added a new section (a)(17) which specifies that the Secretary may require additional information in the Plan.

Period Covered by Plan (Section 98.17 of the Regulations)

Section 658E(b) of the Act specifies that the initial Block Grant Plans submitted by States shall cover a period of three years and all subsequent ones shall cover a period of two years. Section 658O(c)(4) provides that the grants or contracts for Block Grant programs under Tribal Plans shall be for periods not to exceed three years. As a specific period was not provided in the Act, we determined that Tribal Grantees must submit their Plans every two years, just as States are required to do after their initial submittals. Timeframes for

submittal of new Plans will be provided in future written instructions.

Comment: One commenter proposed that the initial Block Grant Plans of States and Territories be limited to two years, as are Tribal Plans, so that the programmatic review and evaluation will be completed earlier.

Response: We are unable to change the length of time that the initial Plans, submitted by States and Territories, must cover. This time period is specified in the Act.

Approval and Disapproval of Plans and Plan Amendments (Section 98.18 of the Regulations)

The Act does not specify a Plan approval or disapproval process. However, it is clear that an approval process is needed, as section 658E(d) requires the Secretary to approve the Plan. The Act also does not mention Plan amendments. However, because Block Grant Plans will be in effect for a multi-year period, it is reasonable to assume that some facets of the Plan may change. Although Grantees have great flexibility in designing their programs, the Act requires Grantees to comply with the statutory provisions and the Plan and provides for the imposition of penalties and sanctions in certain circumstances. Because we will monitor against the Plan, it is necessary that the Grantee have an opportunity to amend the Plan, notify the Department about changes, and receive necessary approvals.

We believe it would be unreasonable to require a Grantee to submit a Plan amendment for all of the changes that occur in the program. We are, therefore, requiring amendments only when a substantial change occurs, e.g., the Grantee adds a significant additional program activity, eliminates a significant program activity, or changes its basic plan for the allocation of funds.

We did not specifically address the form upon which to submit Plan amendments in the interim final rule, nor did we receive any comments on this process. We are taking this opportunity to specify the form. Until we have either devised a transmittal notice or revised the Transmittal and Notice of State Plan Material (Form FSA 4596-U4), State and Territorial Grantees must use Form 4596-U4, and Tribal Grantees must use Form ACF-117, to transmit Plan amendments and indicate that the amendment is for the Child Care and Development Block Grant. (The distinction between a "plan amendment as a new plan" and a "plan amendment" on these forms is not relevant to the Block Grant Program.) The forms are available from each ACF Regional

Office. The chief executive officer of the State, Territory or Tribe, or his/her designee, must review and approve any amendment.

We fashioned the appeals process for Plan and Plan amendment disapprovals after similar processes used in other ACF-administered programs.

Comment: An agency suggested that § 98.18(b) should be changed so that Plan amendments would be submitted prior to the effective date of any change and that the change could not be effective until after the change has been approved.

Response: We do not agree that the Grantee should not be permitted to make a change to the Block Grant program until such time as the change has been approved. If the Block Grant program is to be responsive to the needs of the community, the Grantee must be able to act and react quickly. We, therefore, provide that a Plan amendment must be submitted within sixty days of a change. However, we emphasize that Grantees make changes prior to approval at their own risk. We therefore advise Grantees to submit Plan amendments in advance, particularly if they address provisions or proposals that are not clearly within the scope of the program or are central to program operation. For example, we advise Grantees which have not yet implemented a certificate program to submit relevant Plan sections in advance of the required October 1, 1992, implementation date.

Subpart C—Eligibility for Services

A Child's Eligibility for Child Care Services (Section 98.20 of the Regulations)

The statutory requirements for eligibility for basic child care services (i.e., those services described under § 98.50(b)) are found in section 658P(4) of the Act, under the definition for an "eligible child." These requirements limit eligibility to children:

- (1) who are under 13 years of age;
- (2) who come from families whose incomes do not exceed 75 percent of the State median income for families of the same size; and
- (3) who either reside with a parent or parents who are working or attending a job training or education program, or are receiving, or need to receive, protective services. Under § 98.20(a), we include these statutory requirements, with a reference to the definition of parent at § 98.2(aa). This definition, based on section 658P(9) of the Act, encompasses legal guardians or other individuals standing *in loco parentis*. Thus, the

program will allow child care in certain limited cases where a child does not reside with his or her parents.

The Act does not provide a specific exception to the age limitation for special needs children. Although it did not create a specific exception, Congress indicated its interest in giving special consideration to special needs children under the Block Grant by giving them priority for services under this section. The other child care programs administered by ACF do allow an exception to the age limit for cases where the child has a medically documented physical or mental disability which prevents the child from caring for himself or herself and for children subject to court supervision. In these programs, the upper age limit for these special needs children is up to age 18 or 19, depending on the State's definition of "dependent child" under title IV-A of the Social Security Act. We believe it is consistent with Congressional intent to extend eligibility under the Block Grant for these children on a similar basis. This policy was supported in comments from members of Congress. Thus, the regulation at § 98.20(a)(1)(ii) provides Grantees with an option to serve these special needs children to age 18 or 19, consistent with the exception provided in the other ACF programs. This option will help Grantees create a system of coordinated services.

In keeping with the nature of a block grant program, we have not specified documentation requirements for such children. We are, however, concerned that Grantees verify that such children are in fact incapable of caring for themselves. We will monitor this area, and if there is evidence of abuse, we may impose specific regulatory verification requirements.

The Act also does not provide a specific income exception for children receiving, or in need of, protective services. However, the need for child care in this situation arises from a unique basis that differs from the need of parents who are working or in education or training. The need for care is determined in coordination with a protective services worker as part of a range of supportive services being provided to and/or required of the parent to help ensure the protection of the child. Parents may be uncooperative and may be required to participate in the program. Given this unique and distinct aspect of protective services cases, we have clarified the regulation to provide that, at Grantee option, the protective services worker may waive the income eligibility requirement and fee on a case-by-case basis.

We are not regulating Grantee determinations of State median income, definitions of family structure or income, definitions of "special needs child," "physical or mental incapacity," if applicable, "very low income," "residing with," "working," "attending," "job training," "educational programs," "protective services," or "in loco parentis." Thus, Grantees will be able to develop their own definitions of these terms.

Under § 98.20(b) we explicitly provide that Grantees or other administering agencies have the authority to set additional conditions of eligibility or priority rules, as long as these conditions do not undermine the other policies or requirements of the Act. Specifically such conditions or rules may not discriminate against children, or limit parental choice or other parental rights.

As points of clarification:

- (1) Grantees may show preference toward children with disabilities, pursuant to § 98.44, but they may not discriminate against such children;
- (2) providers may show preference for certain children, pursuant to § 98.46; and
- (3) Tribal programs are specifically intended for the benefit of Indian children. The regulations do not preclude eligibility restrictions based on age, since we believe it would be reasonable for program administrators, as a matter of priority, to target the available services to particular age groups of children. Administrators may also target resources by setting more stringent income-eligibility rules or by limiting services to one group of those eligible, such as children whose parent(s) are working or in education or training. The regulations do specifically preclude basing eligibility or priority for services on a parent's preference for a particular category of care, type of provider, or choice of a child care certificate. Finally, such rules or conditions may not violate provisions of the regulations or Plan.

The regulations allow discretion by administering agencies in determining how best to target their services. This discretion could result in different eligibility rules in effect in different parts of the area served by the Grantee, as there is no "statewide" requirement in the Act. However, any such rules must be consistent with the provisions of the Plan and the requirements of paragraph (a) of this section regarding Federal eligibility limitations, the anti-discrimination clauses in paragraph (b) of this section, and the priority rules at § 98.44. Grantees must specify any additional

eligibility criteria or priority rules they establish pursuant to this paragraph in their Plan.

Comment: One commenter suggested that "homelessness" and "seeking employment" should be added as eligibility criteria.

Response: Grantees are free to add additional eligibility criteria, as a method of targeting their programs, as long as the Federal eligibility criteria are met (e.g., family income is under the income limit, parent(s) are working or in a training or education program). Thus, homelessness could be added as an eligibility criterion.

Regarding the second suggestion, "seeking employment," Grantees have flexibility to define "employed" to include families seeking employment.

Comment: A few commenters recommended that special needs children should be allowed a different income eligibility limit.

Response: Grantees have the flexibility, under § 98.16(a)(6)(i), to define special needs in the Block Grant Plan. Grantees are required, under § 98.44(b), to give priority for service to children with special needs, and, under § 98.20(b), may not discriminate against children with disabilities if they establish additional conditions or priority rules. Within the 75 percent of State median income limitation, nothing in the Act or regulation precludes Grantees from setting different income eligibility limits for special needs children. As an alternative, Grantees could make allowances for special needs children in counting income by disregarding a portion of family income if the family includes a special needs child, or by disregarding medical expenses.

Comment: Some commenters suggested that children who are receiving, or in need of, protective services should be allowed to receive respite child care under the Block Grant program.

Response: Grantees have the flexibility to allow a child receiving, or in need of, protective services, to receive respite child care.

Comment: Several commenters requested that Grantees have the flexibility to exempt children receiving, or in need of, protective services from income eligibility limits. Similarly, some commenters suggested that such families not be required to pay a fee for child care services.

Response: As discussed in the preamble above, we have given Grantees the option to waive the fee and income requirements for cases in which children are receiving, or need,

protective services. We base this approach on the distinct nature of these cases, in which the parent may be uncooperative and may be required to participate in the program to help ensure the protection of their child(ren).

Because the need for child care services for protective services children should reflect the individual discretion of protective services workers, it is appropriate that the protective services workers have similar discretion regarding application of the income and fee requirements. The regulation at § 98.20(a)(3)(ii) has been revised to reflect this authority.

Grantees should establish specific criteria for waiving these income requirements in individual cases. We caution Grantees not to treat eligibility for child care services in protective services cases as an entitlement. Rather, Grantees should view it as a supportive service to be used in conjunction with other needed services provided in protective services cases. We also caution Grantees to coordinate provision of child care services in protective services cases, through the continuing involvement of the protective services worker, in order to ensure that care is necessary and appropriate. Merely referring such families to a child care agency would be inappropriate in many protective services cases.

Additionally, Grantees have the flexibility to establish separate fee schedules and income limits for families receiving, or in need of, protective services.

Comment: One commenter requested that we clarify the issue of parental choice in selecting child care providers for cases in which children are receiving, or are in need of, protective services. Would the choice of providers be left to parents or to child protective services (CPS) workers?

Response: Nothing in this regulation should be interpreted to restrict the ability of CPS caseworkers to determine the appropriateness of child care placements. Parents should be allowed to exercise their choice of child care providers, unless the CPS case worker, or a Block Grant worker in consultation with a CPS worker, determines it is not in the best interest of the child. (See additional discussion at § 98.30.)

Comment: Several commenters suggested that eligibility for child care services for children in foster care should not be based on the income of the foster parents.

Response: Consistent with the treatment of foster care children for other programs, Grantees have the flexibility to consider a child in foster care as a family of one, for purposes of

determining income eligibility under § 98.20.

Comment: Some commenters suggested that children in foster care should be allowed to receive respite care under the Block Grant.

Response: There is no special provision for respite care for children in foster care. Although the foster parents' income does not have to be considered in determining eligibility, the general eligibility criteria (e.g., that the foster parent(s) is working or attending a job training or educational program) would need to be met for child care to be available under the Block Grant program.

Comment: One commenter recommended that child care services should be available to children over the age of 12 whose safety or well-being requires adult supervision during parents' absences (e.g., when parents work night shifts).

Response: The regulations allow Grantees to provide child care services to children between the ages of 13 and 18 (or 19, in some States) who are physically or mentally incapable of self-care or are under court supervision. Although we believe that Congressional intent provides a basis for extending the age requirement for these children, we do not believe there is a basis for including other children.

Comment: One commenter recommended that we require Grantees to permit families with income up to 75 percent of the State median income, adjusted for family size, to participate in the program and not allow Grantees to set a lower ceiling.

Response: We do not agree with the commenter's recommendation. Section 658E(c)(3)(B)(i) of the statute indicates that priority is to be given "for services provided to children of families with very low family income (taking into consideration family size) and to children with special needs." We believe that Grantees are in the best position to know the child care resources and needs of their communities and should have the authority to target resources by setting a lower eligibility ceiling than that established under the law.

Comment: One commenter recommended that the program allow eligible families to continue to be income-eligible until their income equals or exceeds 100 percent of the State median income.

Response: The statute at section 658P(4)(B) provides funding for child care services only for families whose incomes do not exceed 75 percent of the State median income for a family of that size. There is no authority to permit

families with income over the 75 percent ceiling to retain eligibility. However, to protect families with a modest increase in income from immediate loss of eligibility, a Grantee could set the initial eligibility limit at a lower limit. For example, if the Grantee sets the initial eligibility limit at 50 percent of the State median income for a family of that size, the Grantee could allow a continuation of eligibility until the family income exceeded 75 percent of the State median income.

Comment: Many commenters suggested that children in "traditional" families with two parents in the home, where one parent works and the other stays home to care for the children, should also be eligible for the program. These commenters suggested that the parent who stayed home to care for the child should be paid for that care.

Response: The statute, at section 658P(4), defines an "eligible" child as "an individual * * * who resides with a parent or parents who are working or attending a job training or educational program. * * *". The use of the plural "parents" indicates Congressional intent that, in two-parent families, both parents must meet the eligibility factor. Other requirements of the program also indicate that Congress intended only to pay for care when provided by someone other than the child's own parent. The requirement that providers must meet applicable standards, or register, is illogical if the provider is the parent. In addition, it would seem that Congress would have included parents in the group of close relatives who may be exempt from health and safety standards, if they had intended parents to be paid as providers.

Therefore, parents cannot be paid for the care given to their own children, and in most situations involving children in a two-parent family, both parents must be working or in a job training or educational program for the family to be eligible.

However, we give Grantees the flexibility to determine, on a case-by-case basis, if a two-parent family, which otherwise meets the eligibility criteria (e.g., income limitations) would be eligible for the program, under exceptional circumstances, even if only one of the parents works or attends a job training or educational program. An example of such an exceptional circumstance would be that where one parent is bedridden and unable to provide care for the child(ren). This flexibility is consistent with similar provisions of the title IV-A child care program.

A Child's Eligibility for Early Childhood Development and Before- and After-School Care Services (Section 98.21 of the Regulations)

The regulations require that if a Grantee subsidizes, through grants or contracts pursuant to section 658H of the Act and § 98.51 of the regulations, early childhood development or before- and after-school care services for individual children, those children must meet the eligibility conditions in § 98.20(a). This means that if a Grantee uses Block Grant funds under § 98.51 to purchase after-school services, or slots, from a provider, then a child receiving such services must be under age 13 and meet the other statutory eligibility conditions in § 98.20(a).

The regulations also provide that Grantees may set additional conditions of eligibility for individuals to receive early childhood development and before- and after-school care services funded under § 98.51. Such conditions of eligibility would be subject to limitations similar to those which apply to child care services under § 98.50 regarding discrimination and consistency with the Plan and the regulations; they would also have to be specified in the Plan. However, such additional conditions need not be the same as any additional conditions under § 98.50.

We received comments regarding the application of eligibility requirements when Grantees purchase slots with funds under § 98.51. These comments are addressed in that section.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

Parental Choice (Section 98.30 of the Regulations)

Section 658E(c)(2)(A) of the Act requires States to provide assurances that parents are given the option of (1) enrolling their children with a provider who has a grant or contract for the provision of services, or (2) receiving a child care certificate for use with the provider of their choice. The Act also requires that, when a parent selects contracted care, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

Parental Choice Safeguard

Congress clearly intended for the Block Grant to give parents a variety of options in addressing family child care needs. Thus, the regulation specifies that parents electing to use certificates must be permitted to choose among a range of child care options, including: center-

based child care, group home child care, family child care, and in-home care (see definitions in § 98.2). Grantees, therefore, may not explicitly or effectively limit parents' access to any category of care or type of provider from Block Grant funding. Nor may a local agency administering the program under contract limit parents' access to eligible providers. Such agencies have the same responsibility as the lead agency to adhere to Federal and State program requirements, pursuant to § 98.11(b)(8). For example, the local agency may not use Block Grant funds for lobbying, pursuant to § 98.13(a)(4), and must inform eligible families of the full range of child care choices, pursuant to § 98.33.

As discussed, Congress intended for the Block Grant to give parents the widest possible variety of child care options. On the other hand, Congress included several provisions in the Act which invoke Federalism by allowing States flexibility. Thus, the Act embodies principles both of Federalism and of parental choice. In such circumstances, it is the responsibility of the agency administering the Act to strike a reasonable balance between the competing statutory principles.

The regulations reflect our balancing of these competing principles. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, (1984) (deference is given to the administering agency charged with interpreting a statute when the statutory provisions are competing or ambiguous). Thus, although Grantees enjoy great flexibility in program administration, the regulation requires that such discretion may not be exercised at the expense of parental choice. The balancing focuses on four aspects of Grantee administration: State and local regulatory requirements (§ 98.40), health and safety requirements (§ 98.41), payment rates (§ 98.43) and registration requirements (§ 98.45). In each of these areas, excessive and ill-designed requirements or procedures could prejudice parental choice.

In striking an appropriate balance between the competing principles in the Act, parental choice was central to our thinking. The Conference Report indicates that Congress intended that a variety of child care arrangements be available, "including care by relatives, churches, synagogues, family providers, centers, schools, and employers," (H.R. Rep. 964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628).

In addition, specific provisions of the Act, as well as the Act's overall structure, express the importance of providing parents the choice of a full

range of child care options, such as the required availability of certificates, the requirement for parental access, the inclusion of consumer education, the specific inclusion of sectarian providers, and the registration of providers for payment.

Finally, we considered the fact that a primary purpose of the Act is to increase the availability of child care. Any Grantee rules or requirements for the purpose of providing child care under the Block Grant which cause a reduction in the availability of care would be contrary to Congressional intent. Thus, the regulation reflects our balancing of the competing principles of Federalism and parental choice.

Therefore, the regulation provides that Block Grant funds will not be available to a Grantee if State or local rules, procedures or other requirements promulgated for the purposes of the Block Grant significantly restrict parental choice. First, such requirements cannot expressly exclude or have the effect of excluding any category of care or type of provider, or any type of provider within a category of care. Second, such requirements must not have the effect of limiting parental access to or choice from among such categories of care or types of providers. Third, such requirements must not exclude a significant number of providers of any type or in any category of care.

Thus, State or local rules, requirements, policies and procedures promulgated for the purposes of the Block Grant cannot either explicitly, or operationally, result in significant restrictions in the range of child care options. For example, a State requirement for the Block Grant that family day care homes have automatic sprinkler systems would likely have the effect of excluding this category of care under the Block Grant, and if so, would be unacceptable under the regulation.

A rule which did not eliminate a type of provider, but which significantly restricted the ability of a type of provider to participate in the program, would also be contrary to the regulation. For instance, a requirement that only a small percentage of potential Block Grant providers of a certain type could meet, even though all were otherwise legally providing child care services, would be unacceptable.

We would like to note that we will employ an effects test to ensure parental choice. We will not determine in advance whether particular procedures or requirements affect parental choice. Instead, we will examine the effects during a program review, or in response

to a complaint. For example, we might receive a complaint from a family or provider that the standards the State has set for family child care under the Block Grant prevent a significant number of such providers from participating, thus limiting parental choice. We will examine the evidence and give the State the opportunity to respond. We will base our determination on the facts of the specific case, as well as information regarding the availability of other providers of the same type or in the same category. We will look at such evidence as the mix of providers in the community at large, the mix of providers participating under the Block Grant, and the number of providers which appear to be affected by the requirement.

If we find that a State's requirements for the Block Grant program have the effect of severely limiting parental choice, we will give the State a reasonable amount of time to make changes. If the State refuses to change the requirements, we will initiate a compliance action pursuant to § 98.91.

Comment: One commenter stated that the parental choice language was too broad for protective services cases. This commenter suggested a revision which would permit parents in protective services cases to select from providers authorized to care for protective services children.

Response: As discussed at § 98.20, even in protective services cases, the presumption should be that the parent is in the best position to choose a child care provider. With appropriate counseling and consumer education, Grantees should offer such parents the same range of choices as other cases. However, Grantees can set additional requirements for their CPS workers to ensure that a particular child care arrangement is in the child's best interest. For example, Grantees could implement internal procedures requiring child care case workers to notify CPS workers of the provider selected by the protective services families; Grantees could also require CPS workers to visit the selected child care providers.

As always, Grantees should exercise care and judgment in determining the need for and the appropriateness of child care in protective services situations. If the CPS worker believes the child care arrangement places the child at risk of maltreatment, Grantees could revoke eligibility (since this care is not an entitlement), or suggest or require other arrangements.

Comment: A number of commenters suggested that allowing in-home care as an option presented a number of problems, including payment rates that

might be substantially higher than the rates for other types of child care. Other problems related to establishing health and safety requirements and tax issues.

Response: In order to ensure that parents have the widest range of choices of child care arrangements, we believe that it is appropriate to require that Block Grant programs include in-home care as an option for parents. As a consequence, appropriate health and safety requirements must be developed.

However, because the rate for such care may be substantially higher than the rate for care in other settings if the provider must be paid the minimum wage, we have amended the regulation at § 98.30(f)(1)(iv) to permit Grantees to limit in-home care to those situations where payment for such care is reasonably similar to the payments for other categories of care. This provision does not mean that a Grantee could eliminate in-home care as an option. Rather, the Grantee could determine that, because the payment rate for in-home care was, for example, double the rate for other categories, certain limits would apply. In this example, the Grantee could limit in-home care to families in which two or more children require care. The payment to the in-home provider would then be similar to the payment for providing child care for the two children in other settings. This ability to limit in-home care allows Grantees to recognize the same cost restraints that families whose care is unsubsidized must recognize. We distinguish in-home care from other categories of care for the purpose of this exception because the cost of in-home care is generally not directly related to the number of children in care. We have also added language to the regulation at § 98.16(a)(7)(ii) which requires Grantees to specify the conditions (i.e., differences in payment rates) limiting availability of in-home care.

Comment: Although a large number of commenters supported the parental choice safeguard as stated at § 98.30(g), a significant number of commenters opposed it. Those opposing the safeguard asserted that it emphasized parental choice at the expense of ensuring adequate protection for children in care. Many commenters thought it limited a Grantee's ability to regulate child care. Some commenters argued that the parental choice safeguard contravenes the intent of the Act by minimizing regulatory protection for children in care. Others believed that the safeguard discouraged quality child care.

Response: Misunderstanding of § 98.30(g) is widespread. This provision in the Block Grant rule has been

repeatedly confused with provisions in the proposed regulations for the title IV-A and At-Risk Child Care programs (45 CFR Parts 255 and 257).

Both the Act and the Block Grant regulation establish parental choice as the ability of parents to choose from among eligible providers, i.e., providers which meet State, local, or Tribal licensing or regulatory requirements and/or health and safety requirements. States, localities and Tribes have the authority to establish licensing and regulatory requirements as well as health and safety standards. Thus, Grantees can set standards of care that respond to their community's demands, needs and circumstances.

The limitation imposed in the rule at § 98.30(g) is that "State or local rules, procedures or other requirements promulgated for the purpose of the Block Grant" may not significantly restrict parental choice. Thus, rules, procedures, or other requirements which apply generally to all child care providers are not affected by this rule. Similarly, the rules a Grantee may set which apply to all publicly-funded child care are also not affected by this rule. Further, if a rule which applies only to providers funded under the Block Grant does not have the effect of "significantly" restricting parental choice, we would take no action.

We believe that Grantees have the ability within the safeguard to ensure the safety of children in care and to encourage quality care, and therefore, we have not changed § 98.30(g).

Comment: Several commenters asked how we plan to determine the "effect" of rules, procedures and other requirements promulgated for the purpose of the Block Grant. Others sought a definition of "significantly restricts parental choice." One group proposed amending the final rule to require that Grantees inform HHS of any regulations imposed on child care providers receiving Federal funds which are more stringent than the regulations applying to nonsubsidized child care.

Response: We have revised the preamble to discuss the application of the parental choice safeguard. Since the test looks at the effect of requirements created for and imposed on Block Grant providers, we intend to consider this issue during program monitoring and, of course, in response to complaints. At that time, we would consider whether requirements significantly restrict parental choice by explicitly or effectively excluding a category of care or a type of provider. We would base any determination of compliance on a review of program data. For example,

we would not consider a requirement which effectively discouraged a few individual family providers from providing child care for parents receiving Block Grant funds as significantly restricting parental choice.

Comment: One commenter suggested deleting § 98.30(g)(2). The commenter suggested that this test merely reiterates the tests at § 98.30(g)(1) and (3).

Response: Paragraphs (g)(1) and (g)(3) of this section look at the effect of the requirements at a programmatic, or macro, level. Paragraph (g)(2) looks at requirements at the recipient, or micro, level. Therefore, we have not deleted it.

Comment: One commenter suggested adding the word "significantly" to the test in § 98.30(g)(2).

Response: Since the initial language of (g) already includes the word "significantly," it would be redundant to add it to (g)(2).

Certificates

While Grantees must offer parents their choice of services provided with Block Grant funds, they must provide parents with certificates only for services funded under § 98.50.

When a parent decides to enroll an eligible child with a provider that has a grant or contract for child care services with the Grantee, the Grantee must honor the parent's choice of provider to the maximum extent practicable. We expect that Grantees will have in place a mechanism for informing parents about providers which are receiving grants or contracts for services, as well as a means of assessing the availability of those child care slots. Further, we interpret parental choice to mean that a parent may choose to use child care certificates with a provider whose grant or contract slots are filled (if the provider has space otherwise available) or with any other provider a parent may choose.

Many parents will want to use child care providers which do not have a grant or contract with the Grantee. Child care certificates offer parents greater control and flexibility in the selection of a provider. Grantees must inform all parents to whom they offer Block Grant services that certificates are an option available to them and that such certificates can be used with the full range of providers. We have added language to the regulation specifying this requirement. As previously discussed, Congress expected that child care certificates would enable parents to choose from a wide range of child care arrangements including care by relatives, churches, synagogues, family providers, centers, schools, and employers. Child care certificates must

be made available to any parents offered services under § 98.50.

While certificates offer great flexibility in selecting a child care provider, the provider must meet the eligibility requirements described in subpart E. As long as the provider is, or may become, eligible to receive payment, a parent has full discretion in selecting and arranging for the purchase of child care services with a certificate. For example, a parent may choose to designate a neighbor or relative as the provider, even if that provider is not registered with the Grantee, so long as the provider registers before payment is made. Implementation of the Block Grant by the Grantee must not impede providers from meeting basic eligibility requirements; rather, we expect Grantees to assist all providers in meeting these requirements.

To ensure broad parental choice, Grantees must issue certificates for child care services directly to the parents. For the purpose of purchasing child care services, Grantees must implement certificate programs which allow certificates to be used as flexibly as cash between the parent and eligible providers. Grantees will determine the actual form, or forms, of the certificate (e.g., check, coupon, debit card). Additionally, child care certificates must carry a value commensurate with the value of the child care services purchased under a grant or contract. Although the regulations provide Grantees great flexibility in defining the form of certificates and the process for providing them, it is essential that the certificate program provide parents with the maximum choice possible and give them the discretion to choose from a wide range of child care arrangements. As required at § 98.16(a)(11), Grantees must describe the form and operation of their certificate program in the Plan. In monitoring programs under the Block Grant as required under section 658I(b)(1) of the Act, ACF will particularly focus on whether a certificate program achieves these outcomes.

Parents may elect to use child care certificates with a sectarian child care provider. The payments associated with the certificates and such certificates may be expended for any sectarian purpose or activity which is part of the child care services, including sectarian worship and instruction. Pursuant to section 658M(a) of the Act and the regulation at § 98.54(d), however, Block Grant funds received through grants or contracts may not be expended for such sectarian purposes or activities. Funds received via certificates are not considered grants or contracts with the

Grantee but are assistance to the parent, pursuant to the definition in section 658P(2) of the Act and § 98.2(j) of the regulation, and thus, as noted above, are not covered by this restriction. Therefore, the Act does not, and Grantees may not, preclude funds made available through the certificate mechanism from being used for sectarian purposes. Moreover, this restriction does not apply to providers' activities that do not involve the use of funds received under the Block Grant.

While Grantees must provide certificates directly to the parent, the Act does not address whether Grantees must also provide the payment associated with a child care certificate directly to the parent, or whether Grantees must make the payment in advance of the provision of services. We believe that Grantees have the flexibility to establish procedures which meet their individual needs, so long as these procedures ensure timely payment. For example, a State might provide a certificate to the parent, who gives it to the provider, who is then reimbursed by the Grantee. Alternatively, Grantees might use a two-party check that both the parent and provider would endorse before the provider could cash the check.

Grantees have until October 1, 1992, to begin operating a child care certificate program. In order to offer parents maximum flexibility with Block-Grant-funded assistance, we encourage Grantees to develop a certificate program or an interim program as soon as possible. In developing child care certificate programs, Grantees should give full consideration to factors which both support maximum parental choice (e.g., procedures for prompt issuance of certificates and speedy payment for services) and promote efficient service delivery (e.g., through appropriate use of automation). Certificate programs should also include measures to ensure the accuracy of payment (e.g., the correct amount, to the correct provider).

The regulations provide flexibility to establish payment procedures which meet Grantees' individual needs; however, they should include measures to prevent fraud and abuse, such as verification that child care is necessary or that care provided is actually received by the child for whom services are funded.

Pursuant to paragraph (e) of this section, a child care certificate must be made available to any parents offered services under § 98.50. We interpret the option described in section 658E(c)(2)(A), offering parents a choice in the method of financial assistance, to

mean that any time a parent is offered services under § 98.50, certificates must be an actual option for that parent. Whenever parents are offered child care services under the Block Grant, parents who choose certificates must receive them rather than being placed on a waiting list for certificates or discovering that certificate funds are exhausted. For example, if a Grantee's program includes grants or contracts for child care services, whenever contract slots are open (i.e., not filled by a particular child), Grantees must offer parents a choice of enrolling a child in the slot or of using a child care certificate. Therefore, in planning for the use of Block Grant funds, a Grantee should keep in mind that its Plan must provide for the continued availability of certificates as an alternative to contracted services.

Comment: Several commenters disagreed with the approach to parental choice in § 98.30(a) and § 98.30(e), while another large group of commenters supported this approach. Those disagreeing argued that the Act mandates Grantees to provide parents a choice of either enrollment with a provider receiving grants or contracts for child care services or child care certificates, yet the regulation emphasizes certificates. In their view, the regulation fails to treat contract-based and certificate-based child care assistance equitably. Some commenters further asserted that preamble language concerning the availability of certificates throughout the program year, or whenever § 98.50 services are offered, effectively limits parental choice by encouraging Grantees to offer only certificates. These commenters contend that the regulation makes it difficult for Grantees to enter into grants or contracts for child care services, and thus, eliminates child care purchased under grants or contracts as a choice for parents.

Response: We believe that Congress intended for the Block Grant to give parents a variety of child care options. Section 98.30(a) parallels section 658E(c)(2)(A) of the Act in saying that parents must be offered the option of enrolling the child with a child care provider who has a grant or contract for child care services or receiving a child care certificate. The regulation goes on to require that the choice between grant/contract child care or a child care certificate must be available anytime child care services are offered under § 98.50. The option to select child care certificates is further supported by § 98.30(e).

Child care certificates offer parents maximum control and flexibility in selecting a provider. Certificates may be used with a child care provider who also has a grant or contract for child care services with the Grantee, as well as with a provider who does not. While a Grantee may use Block Grant funds to support both grant/contracts and certificates, we believe that the offer of a certificate alone meets the intent of the Act, since a certificate can be used with any provider, including one who also offers contracted slots.

Further, by allowing a phase-in period for implementation of certificate programs, Congress created a distinction between contract and certificate programs. For States which generally offer contracted care, a year was given to implement a certificate program. No such period was given for contracts. The Conference Report specifies that "parents must be given the option of a certificate" (H.R. Rep. 964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). There is no similar language regarding contracts or grants. Rather, parents must be offered a choice of enrolling their child with "a child care provider that has a grant or contract for the provision of such services" if the State has such grants/contracts, but nothing in the Act or Conference Report requires the State to enter into such contracts. We therefore believe that Congress did not intend to require Grantees to provide contracted care; such care can be offered as an option. We have amended the language at § 98.30(a)(1) to clarify this point.

Accordingly, we have not changed the policy in § 98.30(a) or § 98.30(e) in the belief that certificates must be available to afford parents the widest choice of child care providers.

Comment: A number of commenters suggested deleting the requirement that child care certificates must be made available to any parent offered services under § 98.50. The preamble language to the interim final rule indicated that certificates must be available "throughout the year" and waiting lists could not be used. One commenter asked why this rule applied only to certificates. Many cited the difficulty of budgeting for child care service grants or contracts while maintaining sufficient funds for child care certificates. This budgeting challenge, in their view, is of such magnitude that it undermines Grantees' ability to contract for child care services. Other commenters pointed to the need to create a stable child care supply for special populations (e.g., inner city, special needs, protective services) through grants or contracts.

These commenters saw the certificate requirement as impinging on the parental choice of these populations by eliminating grants or contracts to providers that serve them.

Response: There appears to be some confusion about the provision at § 98.30(e) and the associated preamble language in the interim final rule. We have attempted to clarify the preamble in the final rule; however, we have retained the language in the regulation because it ensures that parents are permitted to select the child care provider.

As previously discussed, Congress expected that child care certificates would enable parents to choose from a wide range of child care arrangements including care by relatives, churches, synagogues, family providers, centers, schools and employers. Clearly, to give meaning to this requirement, parents must have the flexibility which certificates offer to select their own child care provider. Thus, we retain the rule that certificates must be available whenever new services under § 98.50 are offered.

This provision does not preclude Grantees from entering into grants or contracts for child care services. Depending on a Grantee's circumstances and needs, grants and contracts may be necessary to provide stable child care for particular populations or certain communities. However, the parents in these special groups should also have the choice of selecting their own provider through a child care certificate.

Certificates should be an actual option to parents whenever § 98.50 services are offered. Thus, if a Grantee has grants or contracts for child care services, parents must be able to choose between contracted slots and certificates. The choice of a certificate should not delay the provision of child care because funds set aside for certificates have been exhausted while contract slots remain open. If child care slots are open (i.e., not designated for a specific child), then a parent who is offered child care services must have the choice of enrolling a child in a slot or using a child care certificate.

In some circumstances, however, the choice might be a certificate or a waiting list; for example, if all contracted slots are filled, child care certificates may be the only choice. Likewise if certificate funds are fully reserved for specific children, and no contract slots are available (either filled or not part of the Grantee's program), it may be necessary to begin a waiting list for certificates.

It should be clarified that it is not necessary to offer certificates any time

§ 98.50 services are being used; rather, certificates must be offered whenever § 98.50 services are offered. For example, if all available funds in an area are "reserved" for specific children in contracted and certificate-funded slots, the Grantee is not offering services and need not offer additional certificates. Thus, a program may not offer new child care during some portion of the program year because all available funds have been assigned to specific children and are being used or "reserved" for those specific children. We have amended the language of § 98.30(a) to clarify this point.

Comment: One commenter asked if it would violate the requirements if a Grantee allocated a portion of its child care services funds for grants and contracts at the beginning of the year, and only the remainder was available for certificates.

Response: As indicated earlier, a Grantee may set aside funds for or enter into grants and contracts for child care services. However, parents must be offered a choice of a certificate whenever a contracted slot is offered. A Grantee could not obligate a large portion of the § 98.50 funds to a child care contract, commit the remainder to a few certificates, then have no certificates available as a choice when contracted slots are offered.

ACF hopes to provide technical assistance regarding an appropriate mix of certificates and contracts in child care programs. We are interested in receiving comments on Grantees' experience with this aspect of the program.

Comment: Several commenters were concerned about measuring compliance with § 98.30(e). One association suggested using a good faith effort as a standard for assessing compliance with this provision and requiring a Plan revision stating a methodology.

Response: We indicate in subpart J that we will monitor Grantee programs for substantial compliance with the regulatory requirements. There may be some circumstances in which a certificate would not be available while the Grantee's program was still offering § 98.50 services, and yet we would not consider the lack of certificate availability a substantial failure of the Grantee's program. For example, a Grantee may allocate funds by county in the State. Child care certificates may be available in one county of the State even though certificates are unavailable elsewhere because all available funds are "reserved." Failure to offer certificates for a substantial number of families, or for a substantial portion of

the program year would, however, trigger a compliance action.

Comment: Questions were raised by several commenters about § 98.30(c)(4), which permits providers to expend funds received through certificates for sectarian purposes. Some objected to the indirect use of Federal funds for sectarian purposes and urged deletion of this provision. Others suggested clarifying the definition of sectarian. In addition, we received a large number of comments supporting this provision.

Response: Parents may elect to use child care certificates with a sectarian child care provider. The payments associated with the certificates may be expended for any sectarian purpose or activity which is part of the child care services, including sectarian worship and instruction. Block Grant funds received through grants or contracts, however, may not be expended for sectarian purposes or activities. This conclusion is based on language at section 658M of the Act, which precludes providers from using funds from grants or contracts for sectarian activities. The Act is explicit in referring to funds from grants and contracts. We conclude, therefore, that funds from certificates can be used for sectarian activities which are part of the child care services purchased with the certificate.

Comment: A few commenters requested clarification of the requirement that certificates must be of a value commensurate with the subsidy value of the child care services purchased under a grant or contract.

Response: We interpret this to mean that a certificate should have a value which permits a parent to purchase child care comparable to that provided under grant or contract in the same category of care. As discussed under payment rates, Grantees should pay the actual cost of care up to the payment rate maximum for a category of care.

Comment: At § 98.30(c)(5) we describe certificates as "assistance to the parent." Several commenters suggested adding language to clarify the impact of such "assistance" on other Federal means-tested programs, e.g., Aid to Families with Dependent Children, Food Stamps, and Child Nutrition Programs.

Response: The Act does not specifically exclude Block Grant assistance to parents from income calculations in determining eligibility for Federal means-tested programs. Further, Grantees should not assume that child care assistance to the provider (grants and contracts) would be treated differently than assistance to the parent (certificates) for these other programs. We have requested opinions from the

Federal agencies administering these programs (i.e., the Department of Housing and Urban Development, the Food and Nutrition Service of the Department of Agriculture, the Social Security Administration, and the Health Care Financing Administration) and will issue guidance in the near future.

Summary of Sections (Sections 98.31, 98.32, 98.33 of the Regulation)

The Act clearly reflects Congress' belief that well-informed parents are in the best position to make decisions about their children's care. Parental choice, as described in § 98.30, affirms this reliance on parental judgment. The Act and the regulations also provide for parental access (§ 98.31), parental complaint procedures (§ 98.32) and consumer education (§ 98.33) which afford parents opportunities to gain information about child care services and child care providers in order to make sound decisions. Together, these three provisions serve to support and enhance parental choice.

Parental Access (Section 98.31 of the Regulation)

Section 658E(c)(2)(B) of the Act requires States to provide assurances that they have procedures which ensure parents unlimited access to both their children and the child care provider during normal working hours and whenever the children are in the care of such providers.

Congress viewed such unlimited parental access to children within the care setting as enhancing parental choice and involvement. Parents are concerned about health, safety, and the quality of care their children receive; unlimited parental access allows them to identify problems and safeguard their children. Moreover, parental access promotes continuity of care between home and the provider.

Information about the right to parental access should be included in States' consumer education programs (§ 98.33).

Comment: A few States indicated that they could not ensure parental access in child care facilities which do not fall within their regulatory jurisdiction. Another commenter suggested limiting the requirement to family child care providers. In addition, some States commented in support of this provision.

Response: A critical feature of parental choice is parents' unlimited access to their children and the provider. Parents must be able to monitor the care their children receive. States must therefore ensure that they have the authority, either directly or indirectly, to require that child care

providers receiving Block Grant funds permit unlimited parental access. For example, Grantees could do this through State statute, as part of a service agreement, or as a health and safety requirement.

Parental Complaints (Section 98.32 of the Regulation)

Section 658E(c)(2)(C) of the Act requires each State to provide assurances that it maintains a record of substantiated parental complaints and that it makes information regarding such complaints available to the public on request.

Maintaining complaint records on providers and making this information available on request enhances parental involvement and parental choice. Grantees have the flexibility to set guidelines for the types of parental complaints handled by their system.

The Act specifies that States maintain a record of "substantiated" complaints. This language implies a system for receiving complaints and making a determination of whether the complaints are substantiated or unsubstantiated. In establishing a complaint system or augmenting an existing one, Grantees should consider developing policies on treatment of anonymous complaints, maintaining records, recording rebuttals or updates by providers, and providing confidentiality for the complainant.

Grantees should agree on interagency roles and responsibilities to ensure that all reports concerning the immediate health and safety of children in care receive a quick response. Clear agency roles are also needed to ensure that adequate and accurate records are maintained.

Comment: One State suggested that they should not be required to maintain records of substantiated parental complaints concerning unregulated providers since they are not subject to State regulatory jurisdiction.

Response: We believe that Grantees have the authority, as well as the obligation, to investigate parental complaints about child care providers regardless of the setting. Grantees have this authority in their criminal codes, from child protection statutes, as well as the authority they grant themselves through health and safety requirements. If there are circumstances in which a Grantee does not have authority to investigate complaints, then it must create the appropriate authority.

Current procedures may be sufficient to adequately address the need for satisfactory investigation. Of course, the various agencies involved should coordinate the investigations they conduct. Grantees could have

agreements with agencies responsible for the safety of children concerning interagency roles and responsibilities. In addition, Grantees could have procedures which ensure that all reports concerning immediate threats to the health and safety of children in care receive a quick response. Agencies involved with protecting children should also agree on methods for maintaining adequate and accurate records.

Comment: Several Grantees asked about the impact of State confidentiality laws on the requirement that information regarding parental complaints be made available to the public on request.

Response: Although States are not required to make the specific content of a complaint available to the public in situations in which State confidentiality rules prohibit the disclosure of specific information, States must inform parents who inquire about a provider that there is a substantiated complaint against the provider. Moreover, Block Grant regulations require that Grantees not pay providers which do not meet health and safety requirements.

Consumer Education (Section 98.33 of the Regulations)

Section 658E(c)(2)(D) of the Act requires States to provide assurances that consumer education information about child care services is available to parents and the general public. Such consumer education must provide information about applicable licensing and regulatory requirements, complaint procedures, and policies and practices concerning child care services within the State.

We included express language on parental options in the interim final rule to ensure that Grantees fully apprise parents of their options for receiving child care services under the Block Grant. We clarified this language in the final rule. Grantees must provide consumers with information about the options of contracted care and child care certificates, as well as health and safety requirements, parents' right to unlimited access to their children while in the care of a child care provider, and the procedures for parental complaints.

We encourage Grantees to provide information to parents on how to recognize indicators of child abuse and how to obtain help if they suspect maltreatment of their children. Information is available from: The Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013, telephone (703) 821-2086.

The requirements specified in the regulation do not limit Grantees; they

can provide other consumer information. For example, we encourage Grantees to provide information which acquaints parents with all the options for child care services available within the State, tells them how to avail themselves of these options, and advises them on how to identify quality child care.

Comment: Several commenters suggested adding specific topics for consumer education to the regulatory language, such as child abuse information or indicators of quality care.

Response: We believe that the regulation and preamble encourage Grantees to provide a range of information about child care. Grantees can design their consumer education program to fit their circumstances. Thus, we have not added new language to the regulation.

Comment: A number of commenters requested that ACF issue a brochure about parental choice options.

Response: ACF plans to undertake a variety of technical assistance projects as the Block Grant is implemented. We will include this as a topic for publication. We encourage others to suggest publications which would be useful to Grantees.

Parental Rights and Responsibilities (Section 98.34 of the Regulations)

Section 658Q of the Act requires that nothing in the Act shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents.

We believe that Congress intended for this section to reinforce parents' right to choose the type of child care services their children receive. It also highlights parents' responsibility to use available information (e.g., through consumer education) to make informed choices about child care services and to monitor the quality of the care received (e.g., visit the provider while their child is in care). Congress clearly believed that Grantees and other agencies are not in a position to substitute their judgment for that of parents, especially in matters relating to child care.

We did not receive any comments on this section of the regulation.

Subpart E—Program Operations (Child Care Services) State and Provider Requirements

Compliance With Applicable State and Local Regulatory Requirements (Section 98.40 of the Regulations)

Based on our review of the numerous comments regarding provider requirements, it is clear that there was a great deal of confusion regarding the

interplay between existing licensing and regulatory standards, including existing health and safety requirements, and the new requirements of the Block Grant. The great variation between States with regard to such requirements and procedures, and the associated variation in the meaning of terms, increase the difficulty of explaining the new Block Grant requirements because the effects of these new requirements will also vary greatly from State to State.

To summarize, the interim final rule policy, which remains unchanged in this final rule, requires that a provider must meet existing applicable State or local licensing or regulatory requirements in order to receive Block Grant funds. Providers not subject to such requirements must register with the State, as explained at § 98.45. The Federal registration requirement described at § 98.45 is a required alternative only for those providers not otherwise licensed or regulated by the Grantee. It is also a simple process for making the provider known to the Grantee for the purpose of making payment and dispensing information to the provider. As required by the Act and these regulations, registration is a process, not a set of requirements.

Notwithstanding the above, all care under the Block Grant must meet health and safety requirements established by the Grantee in certain specified areas. These requirements need not apply, however, to grandparents, aunts, and uncles. Moreover, if existing applicable standards include health and safety requirements in the areas specified for all categories and types of providers, then no additional requirements are necessary.

If certain providers were previously exempt from such requirements, then the Grantee must impose some requirements. Such requirements need not be the same as licensing or regulatory standards but could incorporate existing requirements, such as local fire codes. If the Grantee does not have the authority to impose such requirements on certain providers, it must create authority appropriate to enforce any requirements it establishes. Providers which do not meet applicable health and safety requirements are not eligible to receive Block Grant funds. Such providers should be given the opportunity, and appropriate assistance, to meet these requirements. We describe these provisions in § 98.41.

Adding further to the confusion regarding these issues was the publication by ACF of the Notice of Proposed Rulemaking (NPRM) for the At-Risk Child Care Program. This proposed regulation included language

defining "applicable standards" for the title IV-A child care programs as those standards which apply to all providers within a category, not just those who are subsidized. Under this proposed rule, States would be required, if a parent so requested, to pay for care which did not meet standards other than those which are generally applicable to child care providers. This proposal, which has been confused with the Block Grant requirements, has been widely misunderstood as precluding States from setting standards, or as requiring universal standards. Neither is true. The issue of applicable standards for title IV-A is discussed in more detail in the final rule for the At-Risk Child Care program, published under separate cover.

For the purposes of the Block Grant, States retain a great deal of authority and flexibility to establish standards and requirements. Congress made this point explicit by providing that States could set more stringent standards under the Block Grant than are imposed on other child care providers.

Section 658E(c)(2)(E) of the Act uses the term registration in two different contexts. In paragraph (i), it requires an assurance that providers of child care services for which assistance is provided under the Block Grant meet all applicable State and local "licensing or regulatory requirements (including registration)." This language suggests that registration requirements are a subset of licensing and regulatory requirements. In paragraph (ii), on the other hand, the Act requires Grantees to assure that providers which are not required to be licensed or regulated by the State or local government for the purpose of providing child care be registered prior to any payment of Block Grant funds.

To avoid confusion about the meaning of registration in these regulations, we leave out the term "registration" when we refer to licensing and regulatory requirements, such as the regulation at paragraph (a)(1) of this section. Instead, in the definition section of the regulation at § 98.2(x), we define licensing and regulatory requirements to cover registration requirements which are established under State and local law. Thus, we distinguish between regulatory requirements established under State and local licensing laws and regulations and the registration requirements established pursuant to section 658E(c)(2)(E)(ii) of the Act. As used in these regulations, the term registration refers to the basic procedures, pursuant to § 98.45, which Grantees must establish to facilitate payment and to permit the provision of information to

providers not licensed or regulated by the State or local government for the purpose of providing child care. Additional discussion about registration appears in § 98.45 of the preamble.

We believe that compliance with any applicable licensing or regulatory requirements pursuant to section 658E(c)(2)(E)(i) of the Act and registration requirements pursuant to section 658E(c)(2)(E)(ii) of the Act apply to child care services offered under §§ 98.50 and 98.51. Section 98.40 of the regulations therefore requires that child care providers (e.g., center-based, group, family, before- and after-school, and early childhood development) must meet applicable State and local licensing or regulatory requirements or registration requirements in order to receive Block Grant funds. (See § 98.83 regarding licensing and regulatory requirements for Tribal programs.)

Comment: We received many comments regarding the licensing and regulatory requirements that State and local governments establish. Some commenters requested that we not discourage States from imposing reasonable licensing and regulatory requirements; other commenters suggested that we should not require States to impose unnecessary requirements; others requested that we prohibit States from imposing restrictions on family providers; and some commenters suggested that we require all child care providers to be licensed.

Response: Consistent with the intent of the Act, these regulations neither establish minimum regulatory standards nor preclude State and local governments from establishing licensing and regulatory requirements. Under these regulations, States and local governments retain authority to establish the licensing or regulatory requirements which child care providers must meet.

Comment: One commenter thought that religious organizations should be subject to applicable State and local laws and regulations pertaining to child care.

Response: Under the Act and regulations, it is up to the Grantee to determine what laws and regulations should exist regarding child care and to whom they should apply. If the Grantee chooses to require sectarian organizations to meet child care standards, then a sectarian provider must meet such standards in order to be eligible for payment under the Block Grant. However, the Act does not require that the Grantee set licensing

standards for any category of care or type of provider.

Section 658E(c)(2)(E) of the Act not only requires that Block Grant providers must meet all applicable standards, but it also states that it shall not be construed to prohibit Grantees from imposing more stringent standards for providers receiving Block Grant funds. However, as previously discussed in § 98.30, additional requirements imposed solely on providers receiving Block Grant funds are subject to the parental choice safeguards in § 98.30(g). We believe that both principles, i.e., Grantee authority to impose more stringent standards on Block Grant providers and the right of parents to choose their child care provider, are appropriately accommodated by requiring that State licensing or regulatory requirements or other standards promulgated for the purposes of the Block Grant are consistent with the safeguards for parental choice in § 98.30.

State or local regulations or policies promulgated for the purposes of the Block Grant regarding, for example, credentialing, schooling or training, space, and staffing ratios cannot significantly limit a parent's choice from among categories of care or types of providers.

We expect that, when a parent selects a provider that does not meet applicable standards, the Grantee will give the provider the opportunity to come into compliance. In fact, section 658G(2) of the Act makes funds available in the form of grants and loans to assist providers in meeting applicable State or local standards.

In addition, we are aware that as part of a process that States variously call "registration," "certification," or "licensing," some States have established procedures which require the provider to prove or confirm that certain requirements have been met. For example, a provider might have to submit to or otherwise confirm a building inspection, health department certification, or a criminal records check. In some States, this confirmation can be completed in a few days or weeks; in other States, it may take as long as six months. We are also aware that some States do not pay providers until such confirmation is obtained, while other States pay pending completion of the process, particularly when obtaining such confirmation is time-consuming. Grantees' procedures should either allow a provider to obtain confirmation of meeting such requirements within a reasonable timeframe, or permit payment to providers pending completion of the

process so that providers are not effectively precluded from accepting Block Grant cases on a timely basis.

We require that a description of the process for meeting these requirements, or obtaining confirmation, and the timeframes be included in the Plan, pursuant to § 98.16(a)(14). We will closely monitor such Grantee procedures, with a particular emphasis on timeliness. Grantees should note that Block Grant funds are available to assist Grantees in improving or shortening the process for determining if providers meet requirements.

Grantees are required to describe any existing standards and applicable health and safety requirements annually and to present the findings of a one-time review of any existing State licensing and regulatory requirements, pursuant to § 98.71 of the regulations. We will carefully review the effects of requirements and standards applicable only to providers receiving Block Grant funds to ensure that they do not limit parental choice.

Health and Safety Requirements (Section 98.41 of the Regulations)

Section 658E(c)(2)(F) of the Act requires that each Grantee must provide assurances that there are in effect, under State or local law, requirements designed to protect the health and safety of children applicable to child care providers of services for which assistance is provided under the Block Grant. Paragraph (e) of this section provides that the health and safety requirements listed in paragraph (a) must apply to all providers of child care services offered under both §§ 98.50 and 98.51, except for certain relatives as specified in paragraph (g). Grantees must assure that procedures are in place for:

- (1) The prevention and control of infectious diseases (including immunization);
- (2) Building and physical premises safety; and
- (3) Minimum health and safety training appropriate to the provider setting.

Comment: Some commenters requested that the regulations clarify that existing State standards may be sufficient to constitute minimum standards for unregulated care. Other commenters stated that States should be allowed to maintain existing standards.

Response: Section 658E(c)(2)(F) of the Act specifically notes that it does not require the establishment of new or additional health and safety requirements if existing State or local requirements comply with the Act. States may maintain existing standards.

Minimum health and safety training appropriate to the provider setting could mean, in some instances, Grantee's furnishing information concerning fire and health codes. For certain provider settings—such as home care settings—supplying information regarding applicable public health and safety codes to all registered providers through routine informational mailings, videotapes, or other media could be sufficient to meet the statutory requirement.

Along similar lines, some States exempt churches from child care regulation. It would not be necessary to eliminate these exemptions. While the Act requires that all providers, including those currently exempt from State standards, meet some minimum health and safety standards, States may determine what these minimum standards are. Standards to be met by currently exempt providers may differ from those to be met by non-exempt providers. For example, current building and fire codes which govern the safe operation of the building itself and other measures which States or localities have in place could be sufficient to meet the requirement.

Comment: Many commenters stated that the final rule should "strengthen" the health and safety examples noted in the preamble to the interim final rule. Some of these commenters suggested that we include specific requirements, such as criminal record checks, smoke detectors, and first aid training.

Response: Congress chose not to establish minimum Federal health and safety standards but to specify the categories in which Grantees must establish such standards. We likewise choose to leave the establishment of specific standards to the Grantee. We recommend that States, at a minimum, consider the use of appropriate existing health guidelines, building and fire codes, mechanisms to provide immunization and other such services currently in place in the State.

Grantees may impose more stringent health and safety standards than the examples suggested above. Grantees could, for example, establish health and safety requirements which mandate criminal records checks or attendance at certain types of training. States could also require that providers submit proof of immunization for children in their care or that providers' premises be inspected for safety. We caution, however, that such requirements and their associated processes and timeframes, promulgated for the purposes of the Block Grant, must not have the effect of limiting parental

choice pursuant to § 98.30(g). In addition, if the process of meeting such requirements is lengthy, we encourage Grantees to make payment before the process is complete. Such payment will ensure that Grantee requirements do not discourage providers from participating in the program.

We also reaffirm our commitment to provide copies of, or references to, appropriate studies and other resources in this area. We reiterate our interim final rule suggestion that Tribal Grantees enlist the assistance of the Indian Health Service (IHS), where applicable, in undertaking efforts to prevent and control infectious diseases.

As stated in §§ 98.30 and 98.40, Grantees retain authority to set licensing and regulatory standards for child care. Regarding health and safety, the Act and the regulations require that: (1) health and safety requirements applicable to all Block Grant child care providers are in place; and (2) parents have discretion to choose from a wide range of child care arrangements.

Consistent with the express Congressional intent in the Conference Report, the regulations compel Grantees to have health and safety standards and to ensure parental choice; both, not either, are required (H.R. Rep. 964 at 923-24, reprinted in 1990 U.S. Code Cong. & Admin News at 2628-29).

Comment: Many commenters suggested that the regulations should prohibit State regulation of such matters as curriculum, physical punishment, staffing ratios, and credential requirements for sectarian providers and relatives.

Response: Congress has required that each Grantee assure in the Plan that minimum health and safety requirements apply to providers of child care services for which assistance is provided under the Block Grant. Congress has also required that Grantees provide maximum parental choice. As discussed in § 98.30, we have attempted to strike the balance that Congress intended by requiring that health and safety requirements promulgated for the purposes of the Block Grant must be consistent with the safeguards for parental choice in § 98.30.

Comment: Some commenters suggested that we should not leave health and safety standards to the States because some States exempt certain types and categories of care from licensing and regulatory requirements.

Response: Although States may exempt certain providers from licensing requirements, the Act and the regulations require that all Block Grant providers must meet minimum health

and safety standards; only certain relatives—grandparents, aunts, and uncles—are exempt from this requirement.

Comment: Some commenters suggested that it is impossible to monitor unregulated providers.

Response: Although we understand that it may be difficult for some Grantees to monitor providers that they do not otherwise license or regulate, the Act and the regulations are clear in their intent that all providers must meet minimum health and safety requirements and that Grantees must have procedures to ensure compliance. We also point out that Block Grant funds are available to assist in and improve the monitoring of compliance with health and safety requirements for providers which are otherwise not licensed or regulated.

Comment: Some commenters requested that we not allow States to impose additional health and safety requirements. Others suggested that States should help providers meet existing standards rather than imposing new ones. Also, some commenters suggested that we minimize or prohibit health and safety standards which limit parental choice, with a few commenters suggesting that we should expressly preclude Grantees from conducting criminal records checks.

Response: While the Act does state that Grantees are not required to establish additional health and safety requirements for child care providers which are subject to such requirements, it does not prohibit Grantees from establishing additional health and safety requirements for providers. Therefore, we do not specify what requirements a Grantee may or may not impose but rather will look at the effects of such requirements. As discussed in § 98.30, the regulations limit Grantees in the establishment of requirements promulgated for the purposes of the Block Grant if the additional requirements have the effect of significantly limiting parental choice within a category of care or to a type of provider.

ACF will monitor Grantee programs and review reports required under § 98.70 to be sure that a wide range of caregivers are providing child care services under the Block Grant. For the reasons discussed in § 98.30, if evidence suggests that access to certain categories of care or types of providers, as defined in § 98.2, is limited due to State or local licensing or health and safety requirements for the Block Grant, the Department will take corrective action.

Comment: Some commenters suggested that States should not be required to pay for care that is not safe.

Response: Under the Act and the regulations, States retain authority to license and regulate child care or to set health and safety requirements. Nothing in the Act or regulations prevents a State from establishing requirements to ensure care that is safe and to deny payment for care which does not meet those requirements.

Comment: Some commenters suggested that unregulated providers should not be eligible to receive Federal funds.

Response: The Act clearly intended that parents have the greatest choice possible in selecting child care for their children, including the choice of providers that are not generally regulated in some States. The fact that section 658E(c)(2)(E) of the Act requires unlicensed providers to register before payment indicates that Congress intended such providers to be eligible for payment under the Block Grant.

Comment: One commenter suggested that States should be allowed to set health and safety standards for all license-exempt providers.

Response: Grantees are required both to ensure that health and safety requirements are in effect for all Block Grant providers and that parents have the greatest choice possible from all types and categories of care. The regulations thus not only allow but require Grantees to have in effect health and safety requirements for license-exempt providers, who are not otherwise subject to such requirements.

Comment: Many commenters suggested that sectarian care providers already voluntarily meet health and safety requirements and stated that such care is of equal or superior quality to other, regulated providers.

Response: It was unclear whether the purpose of these comments was to encourage regulatory exemption of sectarian providers from health and safety requirements or to merely respond to assertions that non-regulated care does not meet health and safety standards. Although the Act does not exempt sectarian care from health and safety standards, we do believe that Congress clearly intended that parents have the opportunity to choose from a wide variety of care, including sectarian care.

Comment: One commenter stated that the regulations contain no provision for compliance with health and safety requirements.

Response: Section 98.16(a)(10) of the regulations requires Grantees to include

a description of the minimum health and safety requirements in the Plan. Also, pursuant to section 658E(c)(2)(G) of the Act, paragraph (f) of this section requires Grantees to assure that there are procedures in effect to ensure that Block Grant child care providers comply with all applicable health and safety requirements described in paragraph (a) of this section.

Compliance issues relating to individual providers are the responsibility of the Grantee. Any complaints regarding providers which do not meet applicable requirements must be investigated by the Grantee pursuant to § 98.32.

Comment: One commenter suggested that we should include nutritional training as an integral part of health and safety training pursuant to Congressional intent.

Response: Although Grantees could include nutritional training as part of health and safety training, we do not agree that the Act clearly intended to require nutritional training. It only mentions nutritional training as an optional quality activity under section 658G.

Comment: Some commenters stated that relatives should not be exempt from health and safety requirements.

Response: Based on the statutory definition of "eligible child care provider" in section 658P(5) of the Act, certain relatives need not be subject to health and safety requirements; however, such relatives must meet "any State requirements that govern child care covered by the relative involved" which could include health and safety requirements. Paragraph (g) of this section specifies that grandparents, aunts, and uncles are not considered child care providers subject to health and safety requirements. Grantees should note that such relatives must nevertheless be registered, pursuant to § 98.45.

Comment: Many commenters suggested that we prohibit Grantees from imposing additional health and safety requirements on relatives and neighbors, or that we prevent Grantees from imposing additional training requirements on relatives and family care providers.

Response: We believe that the statutory construction at section 658P(5) was intended to give Grantees the option to exempt certain relatives, i.e., grandparents, aunts, and uncles, from the health and safety requirements that all other Block Grant child care providers must meet. There is no statutory authority to extend this exemption to other types or categories of providers.

In meeting the requirements of this section, we expect Grantees to consider the provider setting. We will neither require Grantees to establish specific standards nor will we otherwise constrain the health and safety requirements established by Grantees so long as those requirements are consistent with parental choice of providers.

Comment: Some commenters suggested that requirements for child care should be consistent throughout Federal programs.

Response: We have attempted where possible to give Grantees the flexibility to create uniform child care requirements. Indeed, it is our hope and intention that Grantees will design programs which will allow persons receiving child care services under the Block Grant, or under any other ACF-administered program, to avail themselves of seamless child care services.

Our responsibility remains, however, to write regulations that conform to the intent and requirements of each statute. For example, the section of P.L. 101-508 which created the Block Grant specifically requires Grantees to establish health and safety requirements for all Block Grant providers; the section of P.L. 101-508 which established the At-Risk child care program contains no such language. While we recognize the advantage of consistent standards for child care, we have no authority to require such action.

Paragraph (c) of this section also requires Grantees to inform the Secretary, via the annual report, if they reduce the level of standards applicable to child care services provided in the State after November 5, 1990. The Grantee must include in the report its rationale for reducing existing standards.

Finally, section 658E(c)(2)(I) of the Act and the regulation at paragraph (d) of this section require that, not later than 18 months after submitting its initial Application, each Grantee must complete a full review of the law applicable to, and the licensing requirements and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State. Grantees are exempt from this requirement if they have reviewed such law, requirements and policies between November 5, 1987 and November 5, 1990.

Sliding Fee Scales (Section 98.42 of the Regulations)

Pursuant to section 658E(c)(5) of the Act, the regulations require Grantees to establish and periodically revise, by

rule, a sliding fee scale that provides for cost sharing by families who receive Block Grant services under §§ 98.50 and 98.51. We require States to base this sliding fee scale on income and the size of the family. We give Grantees explicit authority to waive contributions from families whose income is at or below the poverty level (H.R. Rep. 101-964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). Alternatively, Grantees may require a minimum contribution from all participants.

In order to provide flexibility, we have chosen not to define "periodically," thus allowing each Grantee to determine the most appropriate intervals for reviewing and revising the sliding fee scale. Additionally, Grantees have the authority to consider factors other than income and family size (e.g., family composition, special needs children) in establishing sliding fee scales.

Pursuant to § 98.42(d), although we require Grantees to apply a sliding fee scale to services provided to specific children under § 98.51, the fee scale need not be the same as the fee scale applied to services under § 98.50. As discussed in §§ 98.21 and 98.51, we have determined that the statutory eligibility requirements of § 98.20 also apply to services provided under § 98.51. Requiring Grantees to apply a sliding fee scale to Block Grant services provided under § 98.51(b)(1) conforms to Congress' express intention that the Block Grant generally should provide financial assistance to low-income working families to help them find and afford quality child care services for their children. It is also consistent with requirements in the Act and regulations that Grantees give highest priority for services under § 98.51 to geographic areas with high concentrations of low-income children eligible under chapter I of the Elementary and Secondary Education Act, and then to other areas with concentrations of poverty and areas with very high or very low population densities.

The Act and the implementing regulation at § 98.42 require Grantees to base fee scales on family income and the size of the family. Our review of Grantee Plans revealed a number of misunderstandings. Some fee scales did not actually reflect variations in family size and income. After reviewing applicable statutory language, we believe that Congress intended that fee scales must reflect these factors. We therefore require that Grantee fee scales reflect family size and income; some Grantee Plans must therefore be amended.

The fee must vary to some extent as family size increases. Although altering the fee based on the number of children in care is permissible, it does not satisfy the statutory requirement. Similarly, income eligibility limits that vary based on family size satisfy the requirement that eligibility be limited to 75 percent of State median income for a family of the same size; they do not satisfy the family size requirement for the sliding fee scale.

Our review of Grantee Plans also revealed fee scales that have the effect of varying the fee based on the category of care selected by the parent. For example, two families with the same income and family characteristics choose providers in different categories. Even though the providers' charge is the same, the families' fees are different. This policy is not permissible. While Grantees may take into account the cost of care in establishing a fee scale (e.g., the family pays a percentage of the cost of care), the Grantee may not vary the fee scale based on the category of care or the type of provider.

The fee scale may also take into consideration other factors. One such factor is the number of children in care. The fee for additional children need not be a multiple of the fee for one child. In fact, in terms of affordability, Grantees should consider a reduced fee when additional children are in child care.

Comment: Many commenters suggested that we should include language that would require Grantees to establish sliding fee scales that are "affordable" or that we should give guidance in establishing fees that are affordable.

Response: We considered requiring Grantees to establish affordable sliding fee scales. We ultimately determined, however, not to establish and enforce a universally applicable standard of "affordability." We believe that such a standard would:

(1) Unnecessarily undermine Grantees' flexibility to establish service priorities;

(2) Be administratively difficult to monitor and enforce; and

(3) Preclude variation, which is inherent in the nature of block grants.

Regarding guidance, we intend to provide Grantees with technical assistance in a number of areas. Through our central and regional offices, we will serve as a clearinghouse for Grantees who desire information on practices used by others to increase the availability, affordability, and quality of child care.

Comment: One commenter suggested that we should allow States to waive the

sliding fee scale for protective services cases.

Response: As discussed in § 98.20, the final rule clarifies that Grantees have the option of waiving income eligibility and fees in protective services cases on a case-by-case basis due to the unique nature of those cases.

Comment: One commenter suggested that foster parents should be exempt from the fees charged under the sliding fee scale.

Response: As we discuss in the preamble to § 98.2, for the purposes of the Block Grant program there is a basic distinction between protective services and foster care cases. Unlike protective services cases, there is no basis for waiving the fee requirement in foster care cases. However, because Grantees have flexibility, as discussed in § 98.20, to treat the foster child as a family of one for the purposes of determining income for eligibility and fees, Grantees could effectively reduce or eliminate fees in most foster care cases.

Payment Rates (Section 98.43 of the Regulations)

Section 658E(c)(4)(A) of the Act requires that payment rates for Block Grant services are sufficient to ensure that eligible children have equal access to comparable child care services. That is, Block Grant payment rates must allow children receiving Block Grant services equal access to comparable child care services provided to children whose parents are not eligible to receive child care assistance subsidized with Federal or State funds.

The Act also requires that payment rates consider variations in the costs of providing child care between different categories, as defined in § 98.2(h), and to children of different age groups, as well as the additional costs of providing child care for children with special needs. Therefore, Grantees must differentiate between center-based, group home, family, and in-home child care providers.

Comment: One commenter objected to the provision which states that nothing in this section shall be construed to create a private right of action.

Response: Section 658E(c)(4)(B) of the Act specifies that the assurance by the Grantee that the payment rates for child care under this program are sufficient to ensure that eligible children have equal access to child care services comparable to those provided to non-subsidized children does not create a private right of action. This requirement is statutory. Thus, no suit may be brought by a private individual or group to enforce this section. A person who believes the Grantee is violating § 98.43(a) can file a

complaint, as described in § 98.93, concerning the failure of the Grantee to comply with its Plan.

We also wish to clarify that payment rates should reflect the maximum, not minimum, reimbursement that Grantees will make to a provider. In no case, however, should Grantees pay providers more than the provider's standard charge.

Comment: Many commenters suggested that we should change our definition of categories of care to include separate categories for relatives and other unregulated types of care.

Response: As discussed in § 98.2, we determined that the distinction between categories of care, defined by the setting in which the child care takes place, and types of care, or the nature of the caregiver, is not only useful but also generally accepted practice. We have therefore retained our definition.

Comment: Even given the distinction between categories and types of care, many commenters strongly suggested that Grantees be permitted to differentiate within categories of care based upon the licensing and regulatory requirements placed upon a type of caregiver or based upon the "quality" of care provided. Many of these commenters stated that without such distinction, no incentive existed for providers to become licensed. On the other hand, a large number of commenters expressed support for the provision requiring equal payment rates for licensed and unlicensed providers.

Response: The requirement that payment rates must not differentiate within a category of care has been one of the most controversial issues of the interim final rule. On the one hand, we continue to believe that payment rates should not be based on the type of provider. We believe that care provided by non-licensed providers often entails similar ongoing costs to other types of care provided within the same category, regardless of the level of regulation. As stated above and at § 98.2, we have determined that such types of care would not be considered separate categories. For the purpose of determining rates, we therefore concluded in the preamble to the interim final rule that those providers must be reimbursed at the same rate as other providers in the same category. Thus, a relative taking care of a child in the relative's own home would receive the family child care rate; a relative taking care of a child in the child's own home would receive the in-home rate.

However, we are aware that payment rates for other child care programs allow Grantees to differentiate within

categories of care. In fact, differing levels of reimbursement within categories are currently permitted for other ACF-administered child care programs, including the At-Risk Child Care Program. To provide Grantees with the necessary flexibility to coordinate payment practices between programs, we now allow Grantees to establish different payment rates within a category of care. However, pursuant to the new regulatory language at paragraph (e) of this section, differential payment rates are permissible only in the following circumstances. First, Grantees must base any variations in payment rates within categories on actual differences in market costs. Grantees desiring to establish differential rates within a category of care must establish these rates using a methodologically sound system for determining market costs. Grantees must describe this system in their Plan. Second, differential rates are permissible under the Block Grant only when the Grantee is implementing a child care program in which services provided through the title IV-A child care programs and the Block Grant are delivered through a single, "seamless" system. Attributes of such a system must include: the same payment rates for all programs, the same sliding fee schedules, and the same mechanisms for selection of and payment to providers. The latter means that the same certificate process and range of provider choices must be available in all programs. The payment rate differential may not exceed 10 percent. We established this limit based on our review of Grantee payment rates under the Block Grant and the title IV-A child care programs. We may amend the regulation if information becomes available which leads us to conclude that this limit is inappropriate. The regulation at § 98.43(e) reflects these requirements and the limitation. We have also amended Plan requirements at § 98.16(a)(12) accordingly.

In providing Grantees the flexibility to use differential payment rates, we nevertheless wanted to ensure that such rates did not inappropriately disadvantage certain types of providers. For example, in a State where sectarian child care centers are license-exempt, the State might otherwise have categorized unlicensed centers with all other unlicensed providers and paid them at a rate far below their actual charges. The requirement that differential payment rates be based on a methodologically sound system for determining market costs and which sets payment rates based on the

category of care will prevent this problem from occurring. Grantees may not simply establish a lower rate for unlicensed care based on the premise that such care should be reimbursed at a lower rate. Any differentials must reflect differences in market costs and must distinguish between categories of care. We believe that this approach provides Grantees with the option to reflect real market-driven differences and to create a seamless child care system, yet prevents providers from being inappropriately disadvantaged. In addition, payment rate schedules which differentiate within categories are subject to parental choice requirements at § 98.30(g).

For example, if a Grantee conducted a market survey which distinguished between licensed and unlicensed group home day care providers and found a significant difference in rates, the payment rate schedule could reflect this difference. The Plan would reflect the basis for making this distinction. A Grantee could not simply indicate that it had no basis for determining the rate for unlicensed care and then set a payment rate that was an arbitrarily-set percentage of the rate for licensed care. We intend to issue additional guidance regarding establishing payment rates for all ACF programs in the future.

We are aware that some States preclude the use of public funds in or by sectarian institutions. For such States, differential payment rates may still be an option because funding through certificates is assistance to the parent, not the provider. Thus, a State could determine that State funds, which must be included as a match for child care provided under title IV-A, would be assistance to the parent and could be used with the same range of providers required under the Block Grant. Upon making this determination, such a State could then apply to implement differential payment rates.

Grantees should note that if they wish to create incentives for providers to become licensed, they can do so as a quality improvement activity under the Block Grant. For example, the Grantee could reimburse providers for costs incurred in meeting licensing requirements.

Comment: One commenter stated that previously unregulated providers should be reimbursed for the cost of meeting regulatory requirements.

Response: As discussed above, Grantees have the ability to provide such reimbursement as a quality improvement activity under the Block Grant. It would not be appropriate to

use the payment rate to provide this reimbursement.

Comment: We received many comments regarding equal access to comparable care. Many commenters agreed with our decision regarding the interpretation of equal access. One commenter suggested that equal access to comparable care should mean access to equal quality care for all children.

Response: As discussed in the interim final rule, the regulations require Grantees to assure that payment rates ensure access to all categories of care. Because the Act does not expressly define "equal access," we were required to consider potential definitions. Broadly interpreted, equal access to comparable child care services could mean that Grantees must assure that those receiving Block Grant services must have access to any child care services available in the area served by the Grantee, regardless of cost. Such an interpretation could present significant restrictions on a Grantee's ability to target resources. We believe the better interpretation is that "comparable" does not mean "identical," and, although care of the same category must be available, access to every provider in that category is not required.

We believe that Congress clearly intended that the Block Grant should: (1) Allow access to quality child care for a broad range of low-income families, rather than unlimited access to the most expensive care available to a few eligible families; and (2) allow parents discretion to choose from a wide range of child care arrangements, including care by relatives, churches, synagogues, neighbors, family providers, centers, schools, and employers. We therefore interpret equal access to comparable child care services to mean that Grantees must ensure that payment rates are sufficient to provide access to categories of care "comparable" to child care services available to children receiving unsubsidized care. That is, the payment rate(s) must be sufficient to provide for a choice of center-based, group home, family, and in-home child care. (In-home care may be limited in certain circumstances, as discussed in the preamble at § 98.30.)

We thus require that payment rates provide for access to a broad range of providers. At a minimum, and analogous to regulations at §§ 98.40, 98.41 and 98.45, we require Grantees to assure that their payment rates are consistent with the safeguards for parental choice in § 98.30. Within this constraint, Grantees have flexibility to limit payments for child care services.

In keeping with our philosophy of providing flexibility to Grantees, we do not require Grantees to set limits on payment rates for child care services, nor do we require a single methodology in determining payment rates. Grantees may use any methodologically sound system, including the use of local market rates established pursuant to 45 CFR 255.4 for title IV-A child care, that meets the requirements outlined above. In order to promote program consistency, we suggest that Grantees consider the methodology and payment rates set for other programs.

A description of the methodology for setting payment rates must be included in the Plan, pursuant to § 98.16(a)(12) of the regulations.

Comment: Two commenters thought that payment rates were limited to the 75th percentile.

Response: Payment rates for the Block Grant are not limited to the 75th percentile. Grantees can use any methodologically sound system for determining rates.

Many commenters supported the flexibility given to Grantees to pay for child care at rates above the 75th percentile. As discussed in § 98.50 of the preamble, however, if Grantees are using Block Grant funds to subsidize title IV-A child care rates, Grantees may not use Block Grant funds to subsidize those rates to a level above the local market rate (the 75th percentile).

We note here that there is a great deal of misunderstanding regarding the meaning and effect of defining the local market rate at the 75th percentile for the title IV-A child care programs. This definition is necessary to give meaning to the statutory limit on payment in those programs—the local market rate. For those programs, States must survey providers in different categories of care, and, taking into account factors such as the age of the child and charges for special needs children, establish a local market rate, or maximum, for each. This rate is set at the 75th percentile of charges within a category.

The methodology for establishing the 75th percentile is as follows: Rates within categories are arranged from the lowest to highest. The 75th percentile is that rate at or below which 75 percent of the providers in the category charge. That is, if there are 100 providers surveyed in a category, the 75th percentile is the rate separating the 75 providers with the lowest rates from the 25 who are most expensive; thus, only 25 of the 100 providers surveyed would charge more. This issue is discussed in more detail in the title IV-A At-Risk final rule.

Comment: One commenter suggested that we should ensure that the market rate is paid for child care.

Response: We agree that payment rates should reflect market rates for child care, and we believe that is, in part, what Congress intended by using the phrase "equal access." Also, we have listed in paragraph (b) of this section the factors that Grantees must consider, at a minimum, when establishing their child care rates. We expect Grantees to establish payment rates that reflect actual market rates, including differentials related to the child care setting (category of care), the ages of children to whom care is given, and special needs.

Based on a review of Block Grant Plans, we have determined that some Grantees' payment rates do not vary based on the category of care, age of the child, or special needs. However, since it is possible that there is not a meaningful variation in costs in a particular market based on one or more of these variables, this lack of variation may be permissible. We require that the absence of such variation(s) be explained in the Plan. In addition, rates which do not reflect all factors are not approvable unless the basis for their absence is due to market conditions. We have revised the regulations at § 98.16(a)(12) to reflect this requirement. We intend to issue guidance in the near future regarding these rate-setting issues for both the Block Grant and the title IV-A child care programs.

In the interim final rule at paragraph (e) of this section, we required that Grantees make payment rates available upon request to the Secretary. Our review of the Plans indicated that there is a need to review payment rates to ensure that statutory and regulatory requirements are met. We have therefore added language at § 98.16(a)(12)(i) which requires that Grantees include payment rates in their Plans.

Priority for Child Care Services (Section 98.44 of the Regulations)

This section of the regulation implements section 658E(c)(3)(B)(i), which requires States to give priority for services provided under § 98.50 to children of families with very low incomes and to children with special needs. It also requires Grantees to consider family size when determining low-income levels.

Under these regulations, Grantees have discretion in defining "very low income" and "special needs." Grantees must include a description of the plan for prioritization in the Block Grant Plan, pursuant to § 98.16(a)(7).

Comment: One commenter agreed with the flexibility we gave Grantees to define special needs.

Response: Grantees should note that the flexibility for defining "special needs" relates primarily to the purposes of establishing priority for service or establishing differential sliding fee scales or payment rates. This flexibility does not permit Grantees to extend the age of eligibility for any child other than a child physically or mentally incapable of caring for himself or herself, as provided at § 98.20(a)(1).

We note here that there is some confusion regarding the different references to children with special needs. The term "special needs" is used in three contexts—for targeting resources, for establishing eligibility, and for setting payment rates. For example, some Grantees have defined special needs more broadly (e.g., homeless, non-English speaking) for the purpose of targeting the 75 percent portion while using the more standard definition (children with mental or physical disabilities) for eligibility or payment rates. We caution Grantees to ensure that Plans and instructions to eligibility workers clearly distinguish between the different uses of the term "special needs," if applicable.

Registration (Section 98.45 of the Regulations)

Under section 658E(c)(2)(E)(ii) of the Act, Grantees must provide assurances that child care providers which are not required to be licensed or regulated under State or local law are required to register before receiving any payment under the Block Grant. They must design registration procedures to: facilitate appropriate payment to providers; permit the Grantee to furnish information to providers; and allow providers to register after their selection by the parents of eligible children, but prior to payment.

Registration applies only to child care providers which are not otherwise required to be licensed or regulated under State or local laws. Generally, registration will pertain to providers, such as a neighbor or a relative caring for an eligible child, who are not licensed or regulated under State or local law for the purpose of providing child care.

Many States already have procedures called "registration." The regulation at § 98.45 speaks only to registration necessary under the Block Grant. As discussed in § 98.40, we distinguish between registration required under State or local law and registration

required for the purposes of the Block Grant.

The regulations give Grantees flexibility in establishing a registration process. As previously discussed in § 98.30, however, the registration process established by Grantees must be consistent with the safeguards for parental choice in § 98.30. This requirement is included in paragraph (d) of this section. Registration should facilitate, not impede, parental choice.

As described at § 98.45(b), payment must be timely so that providers are not discouraged from offering child care services. Although we are not regulating a timeframe between request for registration and payment, Grantees must ensure that it is a reasonable period. If we find that timeframes are longer than providers should reasonably expect, we may regulate further in this area. As specified at § 98.16(a)(13) of the regulations, a Grantee's Plan must also include a description of the registration requirements and the timeframes.

Comment: Many commenters stated that the registration requirements imposed by the Block Grant should be more stringent, with some stating that the parental choice safeguards will also deter States from imposing more stringent registration requirements. Other commenters suggested that the regulations provided conflicting direction about registration, suggested that providers with substandard facilities not be permitted to register, or supported the minimal registration process provided that adequate health and safety requirements are in place.

Response: The fact that there are two separate and distinct requirements for Block Grant providers which are not otherwise licensed or regulated by the Grantee seems to cause confusion. Providers which are not otherwise licensed or regulated must: (1) Meet health and safety requirements as detailed at § 98.41; and (2) be registered prior to receiving payment. The regulations require that registration of providers under the Block Grant must be a simple process, such as giving the Grantee the provider's name and mailing address, although Grantees may also require providers to supply additional information at the initial contact, such as birth date or other identifying data. Grantees might also collect other information, such as the standard charge for the care, the number of children served, and types and ages of children served. This additional information could facilitate the provision of appropriate training or information, add to the Grantees' knowledge of the community or serve as a basis for future referrals. Regarding

the statutorily mandated registration process, Grantees should collect only the information that is needed to facilitate appropriate payment to the provider and to permit the Grantee to furnish the provider with information on training, technical assistance, and any relevant information concerning health and safety requirements.

We believe that the Act clearly intended to distinguish the registration process from other requirements for otherwise unregulated providers. We therefore caution that registration should not be a burdensome process which discourages potential providers from offering child care services.

However, in addition to registration, Grantees must also assure that procedures are in place to ensure that registered providers comply with the health and safety requirements pursuant to § 98.41. Grantees should note that, although registration is a process and requirements are limited to those expressly delineated in the regulation, they retain authority to impose relevant additional standards, e.g., criminal records checks, under their authority to establish health and safety standards for all providers. Such requirements are not viewed, for these purposes, as registration requirements, but rather as health and safety requirements.

Comment: One commenter expressed support for allowing sectarian providers to register.

Response: Section 658E(c)(2)(E) of the Act requires that all providers which are not otherwise licensed or regulated must be registered prior to receiving payment under the Block Grant.

Comment: Some commenters questioned whether providers should be allowed to care for children before the provider meets all health and safety standards.

Response: Section 658E(c)(2)(E)(ii) of the Act expressly states that all child care providers must be registered prior to receiving payment under the Block Grant. Section 658E(c)(2)(G) of the Act similarly requires that all Block Grant child care providers must comply with all applicable State or local health and safety requirements. Since the Act does not require that such requirements must be met prior to payment being made, where such requirements are time-consuming, we advise Grantees to authorize registered providers to begin caring for an eligible child pending completion of applicable requirements; such authorization will avert delays in the provision of child care services. In order to ensure informed parental choice, we recommend that States establish a process through which parents in such circumstances are fully

informed that the provider in question has not yet been determined to meet all applicable requirements (additional discussion of reasonable timeframes in meeting standards or requirements can be found in the preamble at § 98.40).

Nondiscrimination in Admissions on the Basis of Religion (Section 98.46 of the Regulations)

Section 658N of the Act contains a number of provisions related to nondiscrimination on the basis of religion. As discussed in the preamble to the definitions in § 98.2 and in the response to comments on this section, these provisions distinguish between certificates, which generally do not trigger these requirements, and grants, contracts and loans, which do trigger the requirements. Under section 658N(a)(2) of the Act, child care providers, other than family child care providers, that receive assistance in the form of grants, contracts or loans under the Block Grant shall not discriminate in admissions decisions against any child on the basis of religion. This does not prohibit such a provider from selecting a child for a child care slot who individually, or whose family, regularly participates in other activities of the organization that owns or operates the provider, as long as the slot is not funded directly, i.e., by grant or contract, through the Block Grant.

Notwithstanding these provisions, section 658N(a)(4) of the Act specifies that, if assistance provided through grants, contracts, loans or certificates under the Block Grant, or through other Federal or State funds, amounts to 80 percent or more of the provider's operating budget, that provider may not receive further Block Grant funds through grants, contracts, or certificates unless its grant, contract or admissions policy specifies that it will not discriminate, on the basis of religion, in admitting any child.

We interpret section 658N(a)(2) to generally prohibit religious discrimination in admissions against children by providers receiving assistance under the Block Grant. We therefore note in the regulation that this provision refers to providers receiving assistance for child care services funded through grants, contracts, or loans under both §§ 98.50 and 98.51. We also note that family child care providers, as defined at § 98.2(r), are exempted from this provision, as are providers receiving only certificates under the Block Grant.

Under paragraph (b) of this section, for slots that are not directly funded under the Block Grant, a sectarian organization, as well as any other

provider, can select children on the basis of a family's participation on a regular basis in other activities of the organization. For slots covered by a grant or contract, providers may not exercise such preference policies.

However, if the combined assistance from Federal and State programs, including the direct and indirect assistance from the Block Grant, amounts to 80 percent or more of the provider's operating budget, the exceptions mentioned above do not apply. We interpret assistance to include all Block Grant assistance, i.e., grants, contracts, loans, and certificates. The Grantee must not permit Block Grant funds to be paid to such a provider until either the provider's grant or contract, or its admissions policy, includes language assuring that it does not discriminate on the basis of religion in admitting children.

Paragraph (c) of this section places responsibility for this requirement on the Grantee, since the Grantee or its designee is responsible for grants and contracts, as well as services provided through certificates.

Comment: Several commenters stated that in applying the religious nondiscrimination provisions, no distinction should be made between providers receiving grants, contracts and loans, and providers receiving certificates.

Response: The application of the religious nondiscrimination provisions only to providers which receive contracts, grants or loans, rather than those who receive certificates, is based on the language of the Act.

In all sections of the Act, except section 658N which deals with nondiscrimination, the Act refers to providers of child care services "for which assistance is provided under this subchapter." Section 658N refers specifically to providers "who receive assistance under this subchapter." Thus, the regulation distinguishes between two types of assistance—grants, contracts and loans which are assistance to providers and certificates which are assistance to parents. This distinction helps to ensure the constitutionality of the use of certificates for child care by a sectarian provider. The language concerning services "for which assistance is provided under this subchapter" would include both types of assistance: assistance to the provider through grants, contracts and loans and assistance to the parents through certificates.

In contrast, the language concerning providers "who receive assistance under this subchapter" would include only

grants, contracts and loans. We believe that in using this different language, the Congressional intent was to limit these nondiscrimination provisions only to those providers which receive assistance, that is, to providers which receive grants, contracts and loans.

Comment: Several commenters stated that the protection from nondiscrimination in this section should apply generally to child care services, not just to admissions.

Response: The statutory language prohibiting discrimination "in providing child care services" can arguably be interpreted to mean either access to services (admissions), or more broadly, the content of services after admission. We believe these nondiscrimination provisions apply only to the admissions of children because the other reading makes provisions of the Act unnecessary and illogical.

If section 658N(a)(2)(A) is read more broadly, to prohibit providers receiving grants and contracts from discriminating in services, then section 658M(a) would be unnecessary. Providers which receive grants and contracts would already be prohibited from using them for sectarian activities by 658N(a)(2)(A).

In addition, the broader reading would make the provisions of section 658N(a)(4) illogical. This section imposes specific requirements on providers which receive 80 percent or more of their budget from public funds (including certificates under the Block Grant) regarding discrimination in admission and hiring. It would be illogical for Congress to prohibit discrimination broadly in services, when a provider receives a grant or contract in any amount, but then only be concerned with admissions when a provider receives 80 percent or more of this funding from public funds. Therefore, we read sections 658N (a)(2)(A) and (a)(4) as applying only to admissions. Section 658N(a)(2) applies only to funds received under grant or contract. Section 658N(a)(4) includes providers which receive certificates when 80 percent or more of their budget is from public funds.

Nondiscrimination in Employment on the Basis of Religion (Section 98.47 of the Regulations)

Section 658N of the Act also includes a number of provisions related to nondiscrimination in employment on the basis of religion. Section 658N(a)(1)(A) provides that, in general, the provisions of any other Federal law or regulation relating to discrimination in employment on the basis of religion apply. Section 658N(a)(1)(B) creates an exception to this by allowing a sectarian organization

to require that employees adhere to the religious tenets and teachings of the organization and to require that employees adhere to rules forbidding the use of drugs or alcohol.

The Act further provides, in section 658N(a)(3), that, with the exception of sectarian organizations, child care providers receiving assistance under the Block Grant in the form of grants, contracts and loans shall not discriminate in employment on the basis of religion if the employee's primary responsibility is or will be working directly with children in the provision of child care services, i.e., a caregiver as defined at § 98.2(g). However, a provider is not prohibited from hiring for any position, from qualified applicants for the position, an individual who is a member of, or who participates in, other activities of the organization that owns or operates the provider. The provisions of section 658N(a)(3) apply only to employees hired after the date of enactment of the Block Grant, November 5, 1990.

Finally, section 658N(a)(4) provides that notwithstanding any provision above, if 80 percent or more of the operating budget of the child care provider comes from grants, contracts, or certificates under the Block Grant or through other Federal or State funds, the provider may not receive further Block Grant assistance unless the grant or contract, or the employment policies of the provider, specifically provide that no person working for the provider will discriminate, on the basis of religion, in the hiring of caregivers.

We interpret section 658N to prohibit nonsectarian child care providers from discriminating on the basis of religion in hiring caregivers. However, from among qualified applicants for any such positions, a child care provider is not prohibited from hiring an individual who is already participating in other activities of the organization which owns or operates the provider.

Sectarian organizations, and the child care providers which are owned or operated by them, are exempt from the general rule and may require all employees, including caregivers, to adhere to the religious tenets and teachings of the organization and may require employees to adhere to rules forbidding the use of drugs or alcohol.

By stating that a sectarian organization may require its employees to adhere to its religious tenets and teachings, section 658N(a)(1)(B) of the Act contemplates that religious organizations may require more than outward conformity with prescribed standards of conduct while an employee

is at work. Section 658N(a)(1)(B) also permits religious organizations to require that employees adhere to rules forbidding the use of drugs or alcohol. Religious organizations may require that employees adhere both on and off the job to rules of the organization forbidding drug or alcohol use.

However, if 80 percent of the operating budget of a provider, including a provider operated by a sectarian organization, is derived from direct or indirect assistance under the Block Grant, i.e., grants, contracts, loans, and certificates, and from other Federal and State funds, there are two possible consequences. First, if the provider is operated by a sectarian organization, that provider loses the religious discrimination exception for caregivers. Second, for all providers, no further Block Grant funds are available to the provider, unless all grants or contracts under the Block Grant, or the employment policies of the provider, specifically provide that no person with responsibilities in operating the child care program, project, or activity, will discriminate, on the basis of religion in employment of caregivers. As with the nondiscrimination in admissions policies, paragraph (c) of this section places responsibility for these requirements on the Grantee.

Comment: As with § 98.46, nondiscrimination in child care services, several commenters stated that in applying the religious nondiscrimination employment provisions, no distinction should be made between providers receiving grants, contracts and loans, and providers receiving certificates.

Response: As discussed more fully in the response to the question in § 98.46, we believe the language of the Act requires the distinction between certificates and grants, contracts and loans.

Comment: We received a large number of comments supporting the ability of sectarian providers to hire employees who adhere to the provider's religious beliefs. However, one commenter stated that it would be hard to enforce "off-the-job" adherence to the religious tenets and teachings of the provider, including rules about drugs or alcohol.

Response: We believe that the ability to require employees to adhere to the religious tenets and teachings of the provider implies that the provider has the option to ensure itself that the adherence is real and thus extends beyond the hours the employee is on the job. However, it is up to the provider to determine if it will have off-the-job requirements and, if so, how it will enforce them.

Comment: A few commenters stated that the final rule should deal with other types of nondiscrimination, i.e., the issue of whether contracts, grants, loans and certificates constituted Federal financial assistance for the purposes of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, all as amended.

Response: As noted in the preamble and regulation at § 98.13, we have revised the Application to require applicable assurances of nondiscrimination by Grantees pursuant to the implementing regulations for the above programs. Under those regulations it is clear that grants, contracts and loans are Federal financial assistance. We have requested information on the issue of certificates as Federal assistance from relevant sources and will provide guidance to Grantees in the near future.

Comment: A few commenters wanted the regulation to specifically prohibit States from imposing employment policies which would force providers to hire individuals with AIDS.

Response: There is no basis for the Department to preclude Grantees from implementing employment standards as they see fit. In addition, we have requested guidance from relevant sources on the possible application of the Americans with Disabilities Act of 1990 to this issue.

Subpart F—Use of Block Grant Funds

Child Care Services (Section 98.50 of the Regulations)

Under section 658E(c)(3)(A) of the Act, Grantees must allocate their Block Grant funds for specific purposes, according to percentages specified in subsequent paragraphs of the Act. We discuss the allocation requirements in this section and § 98.51. We require a description of the Grantee's use of the funds, based on those allocation requirements, in the Block Grant Plan as specified at § 98.16 (a)(7) and (a)(8).

Pursuant to section 658E(c)(3)(B) of the Act, Grantees must use funds that are not required to be reserved under § 98.51 for: (1) Child care services provided to eligible children on a sliding fee scale basis, either as a contracted service or through a certificate program; and (2) activities designed to improve the availability and quality of care. Because Grantees must reserve 25 percent for the purposes specified in § 98.51, by inference, Grantees must use the remaining 75 percent of their Block Grant funds on services and activities authorized under this section.

Child Care Services

As specified in the new regulatory language at § 98.2(l), for the purposes of section § 98.50, child care services are defined as the care given to an eligible child by an eligible child care provider. Pursuant to section 658E(c)(3)(B)(i) of the Act, the services authorized under this section must be provided to children who are eligible under the conditions specified in § 98.20(a), and they must be provided on the basis of a sliding fee scale. Further, the services must be provided through the funding methods under § 98.30 (i.e., under grants or contracts or through certificates). Grantees are not required to contract with any particular provider. In fact, section 658F(a)(2) of the Act indicates that Grantees have authority to impose additional limitations or conditions on contracts or grants, as opposed to certificates.

Grantees must give priority to children of families with very low income (taking into consideration family size) and to children with special needs pursuant to § 98.44. We discuss these priority rules in more detail under the preamble for § 98.20. We cover the requirements for a sliding fee scale under § 98.42.

Grantees may not use Block Grant funds to subsidize the rates for child care provided under title IV-A of the Social Security Act above the local market rate (i.e., the 75th percentile). The statute for the title IV-A programs provides that Federal matching funds are only available up to the local market rate. Using Block Grant funds to contravene the funding limits in the IV-A programs would violate Federal appropriations law, including the axiom that an agency cannot do indirectly what it is not permitted to do directly.

Grantees can subsidize payment rates between the statewide limit and the 75th percentile. However, if Grantees use Block Grant funds to supplement title IV-A child care payments in this manner, all the Block Grant requirements apply to such care. For example, care would have to meet all health and safety requirements, and providers would have to be registered if they were not licensed or regulated by the Grantee.

Comment: Several commenters asked what was meant by child care services. Several also stated that child care services should be defined to include such activities as eligibility determinations, training, and resource and referral.

Response: We have revised the regulation to include a definition of child

care services at § 98.2(l). We limit the definition to the care of eligible children by eligible child care providers, as we believe this was the intent of Congress. Congress set aside other funds for such activities as resource and referral and training.

Comment: A few commenters requested that we clarify whether early childhood development and before- and after-school programs were child care services under § 98.50.

Response: Grantees have flexibility to specify the types of child care which they include as "child care services." As both early childhood development and before- and after-school programs can provide care for children, they can be child care services under § 98.50. Because child care certificates must be available as an option whenever services under § 98.50 are offered, certificates could be used for early childhood development and before- and after-school programs, in this example.

Comment: One State asked whether respite care for children with disabilities could be funded as child care services.

Response: Although respite care for children with disabilities is a type of child care service, it cannot be funded under the Block Grant unless the family meets the eligibility requirements of § 98.20. Under § 98.20, care subsidized by the Block Grant must be needed by the parent because the parent is working or in education and training, or the child must be receiving or in need of protective services. Respite care is provided to give parents time off from parenting, not because a parent is working or in training. The Block Grant could fund respite care for a child with a disability only if the child also needed or received protective services.

Comment: Several commenters stated that the regulations should allow Block Grant funds to supplement other child care rates. Two commenters stated that supplementing rates for title IV-A child care should include supplementing above the 75th percentile, the basis for setting local market rates for the title IV-A child care program.

Response: We have rewritten the preamble language on supplementing other child care rates to clarify that States may generally supplement such rates. For title IV-A child care, States may only supplement rates between the statewide limit and the 75th percentile. As discussed above, supplementing above the 75th percentile would violate Federal appropriation law.

It has come to our attention that, for title IV-A child care, some States are paying an amount that is less than the 75th percentile, but not through the use of a statewide limit. In those cases,

States are out of compliance with title IV-A rules which require payment of actual costs up to the lower of the statewide limit or the 75th percentile. States may not use Block Grant funds to correct this violation of the title IV-A rules.

As noted above, if a Grantee chooses to supplement the rates of other child care programs, all the requirements of the Block Grant apply to that care.

Other Authorized Activities

Other authorized activities include the costs of administration and activities to improve the availability and quality of child care services. Although the Act does not specifically authorize administrative expenses, we will permit limited use of Block Grant funds to cover such costs as necessary expenses of operating the program.

The Act does not directly define what constitutes activities to improve the availability and quality of services for the purpose of this 75 percent set-aside. However, for the purpose of the 25 percent set-aside (which is discussed in the following section), the Act lists five activities for improving the quality of care (i.e., resource and referral, assistance in meeting standards, monitoring of compliance with licensing and regulatory requirements, training, and staff compensation) and identifies two areas for activities to increase availability of child care (i.e., early childhood development and before- and after-school services).

Grantees have broad flexibility to define allowable activities for improving availability and quality of care under this section. Grantees can include activities authorized under § 98.51 as well as any other activity which would improve the availability and quality of child care. Grantees are not required to fund any particular activities and may, in fact, choose to use all the funds for child care services instead.

Comment: One commenter requested clarification on the availability activities which could be funded under § 98.50.

Response: We have clarified the preamble language to reflect that the Grantee can fund the same type of availability activities as are authorized under § 98.51 but is not limited to these.

Limits on Other Authorized Activities

In the Conference Report, Congress indicated its intent that a "preponderance" of the 75 percent funds "be spent on child care services and a minimum amount on other authorized activities" (H.R. Rep. 101-964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). Based on this language, in paragraph (d) of this

section, we have included a requirement that Grantees spend a preponderance of funds on services and a minimum amount on the other activities authorized in this section. We have also specified that, to meet this requirement, Grantees must spend at least 90 percent of the funds for child care services, with no more than 10 percent of the funds under this section available for other authorized activities, including activities to improve the availability and quality of child care and administrative costs. However, we allow Grantees to expend up to 15 percent for administration and other authorized activities in the limited circumstances described below.

While the "preponderance" language alone in the Conference Report would not seem to require that Grantees spend the substantial majority of these funds on services, in using the words "minimum amount" the managers clearly indicate that they want the least possible amount spent on other authorized activities. We categorize other authorized activities as activities to improve availability and quality, as well as administrative costs.

We believe the 10 percent limit is reasonable. First, Congress called the section governing the 75 percent set-aside "child care services;" the use of this title indicates that Congress, in fact, considered the purpose of this section to be services, not other activities. Moreover, the Conference Report states, "it is the conferees' intent that a preponderance" of the 75 percent funds "be spent on child care services." We took this as a clear indication that between 51% and 100% of the funds allotted under this section must be spent on child care services.

The Conference Report also states that it is the conferees' intent that "a minimum amount" be spent "on other authorized activities." We looked to the Act for an indication of what Congress intended by the word "minimum." The Act reserves twenty-five percent of the total Block Grant for activities to improve the quality of child care and for activities to increase the availability of early childhood development and before- and after-school services. Within this twenty-five percent reserve, twenty percent is reserved for quality activities. We did not think that Congress would characterize either of these amounts (i.e., twenty-five percent or twenty percent) as minimal. Thus, we determined that by "minimum" Congress meant an amount less than twenty percent.

We therefore determined that Congress, by using not only the word "preponderance" in relation to child

care services but also the word "minimum" in relation to other authorized activities, intended us to require that the amount spent on services must be closer to 100% than to 50%.

Secondly, Congress provided elsewhere for expenditures on improvements in availability and quality. Further, it is essential that Grantees spend a substantial amount on services under this section in order to ensure that parents have sufficient opportunity to exercise parental choice. Finally, the Act does not even specifically provide for administrative costs; therefore, such costs should be held to a minimum.

In the interim final rule, we permitted Grantees to expend up to 15 percent of funds under the services portion of the Block Grant for administration and other authorized activities for two years to acknowledge start-up costs for the program. Based on information provided during the comment period, we believe that in some cases the costs of administering a well run certificate program may justify administrative expenditures which alone could approach ten percent. For this reason, upon petition to the Department in the annual Application, we permit Grantees to expend up to 15 percent for administration and other authorized activities on an ongoing basis, but only if the Grantee can show that the expenditures for operating the certificate program and related consumer education equal or exceed ten percent of the funds available under this section. This requirement will permit Grantees to use some funds for other authorized activities, yet follows the guidance in the Conference Report. We have changed the regulation at § 98.50(d) and § 98.13(a)(6) (the application process) accordingly.

In § 98.16(a)(7)(i), we require a Grantee to describe in its Plan the activities and services that will be provided pursuant to this section. In addition, we require the Grantee, as part of its Application for Block Grant funds, pursuant to § 98.13(a)(6), to submit a proposed budget for expenditures over the program period, including a breakout of the estimated costs for administration and services under this section.

Comment: We received a large number of comments on the limit on expenditures under the 75 percent specified in the interim final rule. While most commenters expressed approval of limiting other authorized activities so that a majority of the funding was spent on child care services, very few supported the 90/10 split in the interim final rule.

From the commenters suggesting some type of change, we received numerous proposals. While a few commenters suggested eliminating the limit entirely, a majority supported requiring some kind of limit on other authorized activities, particularly administration. However, commenters disagreed on the amount and form of the limitation. A few commenters believed the interim final limit was too high and that administrative expenses should be separately limited to some smaller amount. A few proposed a higher limit for administration. Most commenters thought the limit in the interim final rule was sufficient for administrative costs, but that there should be a separate limit for availability and quality services or that the overall limit should be raised to allow for availability and quality services.

Response: In keeping with the intent of Congress that a "preponderance" of funds be spent on child care services and a "minimum" on other authorized activities, we believe it is reasonable to limit these other activities, and the majority of commenters agreed.

We considered setting separate limits for administration and activities to improve the availability and quality of child care. We are particularly concerned, as were a number of commenters, that administrative costs be kept to a minimum so that Block Grant funds go to child care services and activities. However, we decided that separate limits were not administratively feasible. Although a few activities can be clearly classified as administrative, for most activities, arguments can be made on both sides for classifying them as either administrative or as quality and availability improvements. For example, many of the quality activities specified by Congress, such as training, or monitoring providers for compliance with licensing and health and safety requirements, could also, and would usually, be considered administrative activities.

To help ensure that excessive amounts are not used for clearly administrative activities, Grantees are required to break-out expenditures under § 98.50 in their annual Application. We will examine those break-outs, and we encourage interested groups within the Grantee's service area to request copies of the Application and to comment on its division of funds. In the future, if we notice problems with excessive administrative expenses, we may regulate further in this area.

Comment: A few commenters stated that all of the 75 percent funds should be used for direct child care services.

Response: The Act specifically provides that some portion of the 75 percent funds can be spent on activities to improve the availability and quality of child care.

Comment: One commenter suggested that Grantees should be able to request a waiver of the limit.

Response: We are not providing for a waiver of any of the program's requirements, as the Act does not include any waiver authority.

Comment: One commenter stated that the Act did not expressly limit funding on other authorized activities.

Response: Although the Act does not limit funding for other authorized activities, we believe the Conference Report clearly expresses Congressional intent that such funding be limited by specifying a minimum amount should be spent on them. In addition, such expenditures must be limited if Grantees are to spend a preponderance of the funds on child care services.

Tribal Grantees

As discussed in more detail in § 98.83, the requirements and limitations on the division of funds for Tribal Grantees vary. First, for all Tribal Grantees, the allocation formula includes a base amount, plus an additional amount per child. The purpose of the base amount is to ensure that Tribal Grantees have enough funding to operate a viable program. Therefore, the base amount may be expended for any costs consistent with the purposes of the Block Grant, including child care services, quality and availability activities and administration. Thus, the requirements in §§ 98.50 and 98.51 regarding the allotment of funds would apply only to the per-child amount.

Second, Tribes with grants less than \$225,000 (or such amount as set by the Secretary) are not required to set aside 25 percent of Block Grant funds for quality improvements, early childhood development, or before- and after-school programs. These Grantees must nevertheless expend a minimum of 63.75 percent of the per-child amount on direct child care services (the equivalent of 85 percent of 75 percent).

Activities to Improve the Quality of Child Care and to Increase the Availability of Early Childhood Development and Before- and After-School Care Services [Section 98.51 of the Regulations]

This section of the regulation addresses the requirements at sections 658E(c)(3)(C), 658G, and 658H of the Act regarding how 25 percent of the total Block Grant funding must be spent. At

least 18.75 percent of the total Block Grant amount (i.e., 75 percent of the 25 percent) must be spent for early childhood development and/or before- and after-school services (in the interest of brevity, these will be referred to as section 658H services). At least 5 percent of the Block Grant funding (i.e., 20 percent of the 25 percent) must be spent on improvements in the quality of child care services. The Act does not address the use of the remaining 1.25 percent. Thus, the regulations provide that this remaining amount may be used either for the quality activities or for the early childhood development and/or before- and after-school services. We have revised the language in paragraph (f) of this section to clarify that expenditures on administrative activities associated with each type of activity will be included with program expenditures to determine if the percentage requirements have been met.

Activities for Improving the Quality of Child Care

Section 658G of the Act lists five possible activities for improving the quality of child care. We incorporated this list (i.e., resource and referral, assistance in meeting standards, monitoring of compliance with licensing and regulatory requirements, training and staff compensation) in paragraph (b)(2) of this section of the regulation.

With the exception of grants or loans to assist providers in meeting requirements (section 658G(2) of the Act), the Act and regulations do not specify the form in which funds related to quality improvements are to be provided. Thus, Grantees may use grants, contracts, or other forms of assistance which they deem appropriate. (We discuss loan programs which Grantees establish to assist providers in meeting applicable requirements in greater detail in the preamble and the regulations at § 98.60 (b) and (i).) Grantees may set additional limitations or conditions on the receipt of grants or contracts, pursuant to section 658F(a)(2) of the Act.

Comment: A majority of commenters expressed support for State flexibility for designing programs under § 98.51 designed to meet the quality needs of the Grantee. However, some commenters thought the regulation should emphasize the importance of training and staff compensation as tools for achieving quality child care.

Response: While we recognize that training and staff compensation are two important indicators of quality child care, the decision on whether to fund such activities and at what level is appropriately left to the Grantee. In fact,

the purpose for the public hearing required by § 98.10 is to allow a specific opportunity for individuals and groups to inform the lead agency of their views on how the program should be designed. Individuals with ideas in this area should contact their lead agency.

Comment: Several commenters noted that consumer education should be included as a quality activity.

Response: The Act lists the five activities which are considered quality activities for the purposes of § 98.51 funding. Monitoring compliance with standards and health and safety requirements is one of the five activities specified in the Act. In our view, providing parents with the consumer education to recognize quality care, e.g., determining whether health and safety requirements are met, can be a component of the monitoring process. Thus, consumer education can be included as monitoring, an allowable quality activity under this section.

Comment: One State asked for ideas on additional quality activities that could be funded under § 98.51.

Response: Because of the statutory language, § 98.51 limits quality activities to the five types of activities specified in section 658G of the Act and listed at § 98.51(b)(2) of the regulation. Grantees must fund quality improvements which do not fit into those five areas under § 98.50 (see additional discussion in that section).

Comment: Several commenters wanted us to clarify that the regulations do not prohibit funding to sectarian organizations for training, staff compensation, the purchase of equipment or minor remodeling to meet health and safety requirements.

Response: Nothing in the regulation would prohibit a Grantee from choosing to fund sectarian organizations through grants and contracts for such purposes.

Section 658H Activities

Under section 658H of the Act, Grantees must fund activities to establish or expand and conduct early childhood development or before- and after-school programs, or both. Grantees are not required to use these funds on the direct provision of services. Rather, they may use funds for any activities which help to "establish or expand and conduct" such programs. For example, Grantees may provide funds to institutions and other organizations for items such as minor remodeling and equipment, as well as for additional slots; they could also issue grants to help an organization set up a program of home-based, early childhood development services.

We have not provided Federal definitions of early childhood development programs, before- and after-school programs, or academic programs but have allowed Grantees to define them. For example, such programs could be full- or part-day. However, pursuant to § 98.54, funds must not be used for tuition or any services which supplant or duplicate the academic program of any public or private school.

If a Grantee is funding slots with the funds under this section, a child must meet the eligibility requirements specified under § 98.20(a) in order to be selected to fill one of those slots. In addition, as explained in § 98.21(b), we allow Grantees to establish additional eligibility and priority rules. Such rules may be similar to, or different than, the eligibility criteria established for child care services under § 98.50. As discussed in § 98.42, the Grantee must also apply a sliding fee scale to such slots. This sliding fee scale may also be similar to, or different than, the sliding fee scale established for child care services under § 98.50.

The Act establishes priority for grants for section 658H services based upon geographic areas rather than the individual basis used to establish service priority under § 98.50 (the geographic priorities are found in paragraph (c)(2) of this section). Under the Act, Grantees must give the highest priority to geographic areas that are eligible to receive grants under section 1006 of the Elementary and Secondary Education Act. Thus, organizations that provide services to children in local school districts which have high concentrations of low-income children eligible for Chapter I basic grants receive first priority for section 658H services. As provided in section 1006, districts are considered to have high concentrations if they have 6500 such children, or if such children make up at least 15 percent of all children in the district. Grantees must give secondary priority for grants or contracts for section 658H services to other areas of poverty and areas of high and low population density. We allow Grantees to define what constitutes poverty and high and low population density.

The Act and the regulations are both clear that Grantees may fund section 658H services only through grants and contracts. As discussed previously in the section on quality improvement activities, Grantees may set additional limitations or conditions on the receipt of grants or contracts by providers, pursuant to section 658F(a)(2) of the Act.

Similar to our policies on the funding of registered providers, Grantees may fund programs which do not currently meet applicable State or local regulatory requirements but are expected to meet such requirements; they are not limited to funding of currently licensed or regulated providers. It would be difficult for Grantees to establish new programs if they were limited to funding currently licensed or regulated providers.

In § 98.16(a)(8)(i), we require the Grantee to describe in its Plan the activities and services that will be provided pursuant to this section. In addition, we require the Grantee, as part of its Application for Block Grant funds, pursuant to § 98.13(a)(6)(i), to submit a proposed budget for expenditures over the program period, including a breakout of the costs for administration and activities under this section.

Comment: Several commenters asked when the eligibility requirements of § 98.21 and the sliding fee scale under § 98.42 applied to early childhood development and before- and after-school programs.

Response: We have clarified the language in the preamble to specify that eligibility requirements and the sliding fee scale apply when the Grantee is purchasing slots. If the Grantee is funding parts of the program which cannot be associated with particular children, such as purchasing start-up equipment or paying part of the rent, application of the eligibility requirements and sliding fee scale is not mandatory. Grantees would, of course, have the option of applying them to all children in the center.

Comment: Several commenters thought that Grantees should be required to fund early childhood development and before- and after-school programs under § 98.51 with certificates as well as grants and contracts.

Response: The Act and regulations are clear that programs funded under § 98.51 must be funded with grants and contracts. Certificates are an option only for services under § 98.50. However, as discussed more fully in the preamble to § 98.50, certificates under § 98.50 could be used for early childhood development and before- and after-school programs, including those which receive grants or contracts under § 98.51.

Comment: Several commenters asked about the requirements for before- and after-school programs funded under § 98.51. In particular, they questioned whether such programs must run during the summer. Some commenters also asked whether before-school services must be offered since no need existed

for such services in their locality. One commenter noted religious considerations may preclude some providers from providing after-school services at certain times. For example, the Jewish Sabbath begins at sunset; during the winter months the early sunset would preclude the operation of an after-school program on Fridays.

Response: The Act requires that such services be provided "Monday through Friday, including school holidays and vacation periods other than legal public holidays * * * during such time of the day and on such days that regular instructional services are not in session." We believe Grantees have the flexibility to define before- and after-school services based on the statutory language. Thus, a program may or may not include summers, based on the Grantee's definition. Grantees also have flexibility to determine what time of day such services are to be available. Services which do not meet the State's definition of before- and after-school services for the purposes of funding under § 98.51, e.g., summer-only school-age child care programs in a State which requires year-round before- and after-school programs, can still be funded as child care services under § 98.50.

Comment: A few commenters asked whether a before- and after-school program which is conducted at the school during the school year and at an alternative site in the summer could be funded under § 98.51.

Response: There are no Federal requirements which mandate that the site of a before- and after-school program be the same in the summer as during the school year.

Tribal Grantees

As discussed in more detail in § 98.83, we do not require Tribes with grants less than \$225,000 (or such amount as set by the Secretary) to set aside 25 percent of their per-child amount for quality improvements, early childhood development, or before- and after-school programs. However, these Grantees must expend at least 63.75 percent of the per-child amount on direct child care services (the equivalent of 85 percent of 75 percent). They may expend the remaining per-child amount for any costs consistent with the purposes of the Act including child care services, activities to improve the availability and quality of child care and administrative costs.

Administrative Activities (Section 98.52 of the Regulations)

The Act does not address the use of Block Grant funds for administering the program. However, since administrative

costs are necessary expenses of operating the program, we will permit the limited use of Block Grant funds to cover such costs. We are concerned, however, that using more than the "minimum amount" identified in the Conference Report for administrative costs will limit a Grantee's ability to achieve the purposes of the program (i.e., to increase the availability, affordability, and quality of child care services). Therefore, under § 98.50(d)(2), we establish a limit on administrative and quality and availability improvement activities for the 75 percent portion of the Block Grant. In this section, we address specific allowable administrative costs.

We considered providing an exclusive list of administrative activities for which Block Grant funds could be used. However, we decided to allow Grantees flexibility in defining such costs.

In order to ensure that Grantees spend their Block Grant funds on activities that satisfy the purposes of the program, the regulations require Grantees to submit a dollar estimate for each program period of the amount of funds they plan to spend on administrative activities. They must submit this estimate with their Application, as provided in § 98.13(a)(6). This requirement will enable us, the Grantee, and the public to examine the amount of such expenditures to prevent excessive administrative costs. As noted in the preamble to § 98.13, this amount is an estimate, and it is not subject to the compliance process.

The estimate must represent the aggregate of costs associated with administrative activities, examples of which are included in the regulation at paragraph (b) of this section. As noted above, the list of activities in the regulation is not exclusive; Grantees may specify other activities of a similar nature. The Application must also include a list of administrative activities that the Grantee plans to conduct with Block Grant funds.

Grantees must include costs for administration and implementation of the program at both the State and local level in their estimate. Because they may find it difficult to estimate administrative costs at all levels, we suggest that they set percentage limits for the administrative costs of agencies administering the program at the local or subgrantee level. Total expenditures for administrative activities must be limited as specified in § 98.50(d).

In the annual report to the Secretary, as provided in § 98.71(a), Grantees must include the actual amount of funds spent on administrative activities at the State and local level. As clarified below, we

require an aggregate amount to be reported for State and local expenditures on administration, not a separate amount for each.

Comment: Many Grantees and interest groups criticized the limitation in the interim final rule on administrative and quality and availability improvement activities under § 98.50. In general, commenters agreed with the concept of a limit on administrative costs but urged us to increase the limit.

Response: In the final rule, we retain the general limitation policy but have allowed an exception if the Grantee demonstrates that the costs for operation of the certificate program and the related consumer education equal or exceed 10 percent of the funds available under § 98.50. We discuss the limit more fully at § 98.50(d).

Comment: Several commenters did not agree with our description of administrative activities at § 98.52(b) and asked that we either revise the description to include fewer activities or allow Grantees to define these activities. The primary criticism of our description was that it was too broad and included activities that the commenters would classify as program, not administrative, activities. For example, some commenters asserted that activities such as the determination of eligibility, consumer education, and child care referral, which we include in our description of administrative activities, are services given to families to support them in the provision of child care and therefore represent program costs.

Response: We have not changed our description of administrative activities at § 98.52(b). We continue to describe administrative activities as we did in the interim final rule because of our concern that the preponderance of the funds set aside for activities under § 98.50 be spent on direct child care services. We have, however, adjusted the limit under § 98.50(d)(2)(ii) that we had previously placed on administrative and quality and availability improvement activities.

While we specify the determination of eligibility as an administrative activity at § 98.52(b), we want to clarify that we do not include consumer education and resource and referral in the description. Nevertheless, these activities are still subject to the limit on administrative and quality and availability improvement activities. While consumer education and resource and referral are related to the provision of child care, these activities are not child care services as defined at § 98.2(l) so they may not be considered expenditures

under the 90 percent reserved for services.

Distinguishing between administrative activities and quality and availability improvements is neither useful nor practicable. The overall purpose and effect of the limitation is to ensure that Grantees maximize direct child care services. Thus, regardless of whether an activity is defined as an administrative activity or a quality or availability improvement, it is still subject to the overall limitation under § 98.50(d) (see preamble at § 98.50 for further discussion).

Comment: One commenter objected to the inclusion of program planning, coordinating, and monitoring activities as administrative activities and recommended that we delete them from our description of administrative activities at § 98.52(b)(1).

Response: We do not agree with this comment and have not changed our description of administrative activities. The activities listed by the commenter are activities associated with administering the Block Grant program.

Comment: There were several comments about counting local administrative costs under the administrative and improvement activity limit. Some commenters wanted us to continue to require Grantees to break out their administrative costs between the Grantee and subgrantee level in their annual Applications. Other commenters wanted us to require an aggregate or total administrative cost figure.

Response: We are not changing the policy stated in the interim final rule. However, since commenters demonstrated some confusion about the policy requirements, we believe clarification is needed.

In the interim final rule, we required that Grantees include an estimate of their administrative costs, including their subgrantees' administrative costs, in their annual Application. We do not require Grantees to break out their own administrative costs from their subgrantees' administrative costs. Grantees should include just one figure in their Application that estimates how much of their 75 percent portion will be spent on administrative activities.

Comment: One commenter asked that we not count subgrantees' administrative costs under the limit, but that we treat these costs as under § 98.51(f) which states that administrative costs associated with activities funded by the 25 percent portion are considered amounts expended for program activities.

Response: As discussed in § 98.51, we have revised the language to clarify that

such administrative costs will be included with program costs in determining if the required percentages are met, rather than considering them program costs. We treat administrative costs differently under § 98.51 than we do at § 98.50 because of the difficulty in categorizing activities under § 98.51 as administrative or programmatic and because the Act and Conference Report are silent regarding proportional limits on these funds.

At § 98.50(d), however, our concern is that the preponderance of the funds under § 98.50 be expended on direct child care services. Thus, any costs that are not for direct child care services are subject to the limit discussed at the beginning of this section. Subgrantee or contractor costs must therefore distinguish between child care services and other authorized activities in order to determine whether the Grantee is expending a sufficient portion on child care services.

If the contract is solely for direct child care services as defined at § 98.2(l), Grantees do not need to distinguish administrative costs from child care service costs. In such cases, all contractor costs are considered child care service costs.

Supplementation (Section 98.53 of the Regulations)

Section 658E(c)(2)(J) of the Act requires an assurance that funds under the Block Grant will be used to supplement, not supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs. This requirement means that Block Grant funds must provide additional, or enhanced, services. Block Grant funds may not be used to replace existing expenditures.

Expenditures Included in the Non-Supplantation Amount

In order for ACF to determine that this requirement is met, the regulation requires the lead agency to establish dollar values for expenditures on child care services and related programs on the Federal, State and local levels for an initial twelve-month base period and for each subsequent twelve-month period. We will compare expenditures during each subsequent period with expenditures during the base period to determine whether supplantation has occurred. Grantees must report the expenditure amounts in their Application pursuant to § 98.13. Such amounts should include non-Block Grant Federal, State and local funding for child care services and related programs

which will be provided through the Block Grant, in whole or in part. The requirement is limited to public funds.

Comment: Several commenters suggested that the lead agency should only be responsible if supplantation of funds under its control occurs. They stated that the requirement should not include local and/or Federal funds. One commenter suggested that instead of including local funds in the total, States should be allowed to use non-supplantation assurances in its own contracts with local entities.

Response: The Act requires that Federal and local expenditures for child care and related services be included for non-supplantation purposes. Therefore, Grantees must include both in their non-supplantation amounts. In addition, Grantees must include the local expenditures, rather than just getting an assurance from the locality, in order to provide sufficient information for us, when monitoring, to determine that the requirement has been met.

Comment: One State suggested that any local "voluntary" match of State funding for child care and related services should not be included in the non-supplantation amount.

Response: The purpose of the non-supplantation provision is to ensure that Grantees use Block Grant funds to increase services rather than to replace existing funding. It would be inconsistent with this purpose to allow the exclusion of "voluntary" funding. Grantees must include all local funding, including any "voluntary" match in the non-supplantation amount.

Comment: One commenter asked that we further explain what is meant by "related services."

Response: When a Grantee computes the non-supplantation amounts, it includes expenditures for child care and related services. Included in the "related services" are those services related to child care which the Grantee will be funding, in whole or in part, through the Block Grant. For example, if a Grantee will be funding resource and referral, as part of its § 98.51 activities, it would include Federal, State and local expenditures for resource and referral, as a related activity, in its non-supplantation amounts. Conversely, if a Grantee is not funding such activities under the Block Grant, it would not include public expenditures on such activities in its non-supplantation amounts, since resource and referral is not a related activity for that Grantee.

Comment: One commenter stated that all spending in the State on child care and related services, even those types of child care or kinds of services not included in the Block Grant, should be

included in the non-supplantation amounts.

Response: The purpose of the non-supplantation provision is to ensure that Block Grant funds are not used to replace funding that was otherwise being spent on child care and related services. Therefore, we believe that Grantees should include only those services which could be replaced with Block Grant funds in the non-supplantation amounts. Thus, child care and related services include only those types of activities and services which Grantees will actually be funding under their Block Grant program. However, as Grantees may need to amend their non-supplantation amounts in later years due to changes in program activities under the Block Grant, we would suggest that Grantees ascertain expenditures for all possible Block Grant activities for the base year.

Comment: A few States suggested that Grantees should be allowed to amend their non-supplantation amounts.

Response: Grantees should amend their non-supplantation amounts to reflect more accurate data and to reflect changes in the Block Grant program. For example, if a State received more accurate local data on child care expenditures, it should amend the local non-supplantation amount. Similarly, if the State did not include training originally in its Block Grant Plan, but at a later date funds such training as a related child care activity under § 98.51, it should amend its base non-supplantation amount to include funds expended for training. We have added a new subsection (b)(5) to the regulation to reflect this clarification.

Comment: One State objected to including Head Start expenditures in its non-supplantation amount.

Response: Head Start is an early childhood development activity. If a Grantee is funding early childhood development activities under § 98.51 or is paying for early childhood development services as child care services under § 98.50, it must include funding for Head Start in its Federal non-supplantation amount.

Comment: One commenter stated that private funds should not be included in the non-supplantation amount.

Response: As stated in the preamble, because of statutory language, only public funds are included in the non-supplantation amounts. Private funds are not included.

Comment: One State proposed that the amount be based on appropriations rather than expenditures.

Response: As the Act specifically refers to "funds otherwise expended," we believe the use of expenditures for

determining the non-supplantation amounts is appropriate.

Comment: One Tribe questioned whether the revenue from a Tribal business, which is expended for child care, should be considered public funds.

Response: We believe that revenue from a business run by the Tribe, as a governing entity, is public funds for the purposes of the non-supplantation amount. When such funds are expended for child care and related services, Tribes must include them in the Tribal non-supplantation amount. These funds are no different from the revenue which a State or local government may receive from a non-tax source, such as an enterprise it runs. For example, if a State runs a lottery and uses funds from that lottery for child care, those are public funds to be included in its non-supplantation amount.

The Base Period

We define the base period as a period of twelve consecutive months which includes the month one year prior to the month for which the initial Application is made. We consider an Application for funding to be made as of the month that Federal funding becomes available, even if the Grantee starts actual implementation of its program at a later date. For example, for FY 1991, Federal funding became available on September 7, 1991. Thus, for Grantees whose initial Application was for FY 1991 funds, the month for which application is made is September 1991. The base year would include September 1990, the month one year prior to the month for which the initial application is made.

For a Grantee with a fiscal year that runs from October through September, the base period for an Application for FY 1991 funds could be the fiscal year that started in October of 1989 and ended in September of 1990. It could also be the 1990 calendar year. For Grantees whose first Application for funding is for FY 1992 funds, the base year would include September 1991, as Federal funds become available September 30, 1992.

We established the base period above so that the first subsequent period would include a period during which Block Grant funds are available. We provide flexibility in setting the base period by allowing the period to be any twelve-month period which includes the appropriate month as described above. This policy allows for Grantee fiscal years which do not coincide with the Federal fiscal year or for another twelve-month period of the Grantee's choice.

Comment: The majority of commenters supported the non-supplantation provisions in the regulation and the base year concept. However, one State criticized the use of the base year. The State commented that by using each previous funding year as the base, any increase in State child care funding would become a permanent appropriation. A few other States commented that they should be able to leave expenditures for one-time child care initiatives out of their non-supplantation amounts.

Response: The States' concerns are based on the misconception that the base year changes each year. However, a Grantee establishes a base year and corresponding non-supplantation base amounts the first time it applies for Block Grant funds. Those same amounts are used for comparison with expenditures in each subsequent period. For example, a Grantee first applies for funding for FY 1991. It chooses calendar year 1990 as its base year and reports aggregate State expenditures of \$1,000,000. When the Grantee applies for FY 1992 funds, it gives its State expenditures for calendar year 1991 (the next subsequent 12 month period) which were \$1,350,000. This amount includes expenditures for an increase in payment rates of \$100,000 and a one-time initiative for recruiting and training providers for special needs children of \$250,000. The \$1,350,000 is compared with the expenditures for the 1990 base year of \$1,000,000. When the Grantee applies for FY 1993 funds, it gives its State expenditures for calendar year 1992, the next succeeding twelve month period, as \$1,100,000. This amount would again be compared with the expenditures for the 1990 base year of \$1,000,000. The Grantee does not have to maintain the 1991 level of funding in 1992, as 1991 is not the base year.

In addition, as discussed more fully in the next section, Grantees should remember that comparisons are of expenditures aggregated by level of government—Federal, State and local. Thus, expenditures in one type of program, or from one source, can decrease if expenditures in another type of program, or from another source, increase.

Aggregation of Expenditures

In the interim final rule, we required Grantees to establish a single aggregate of expenditures for child care and related programs on the Federal, State and local levels. A number of commenters were concerned that this methodology would have permitted Grantees to supplant funding at one level of government when funds

increased at another level. For example, if Head Start funding increased, State and local funding could decrease. We believe that this is not in keeping with the intent of this provision. For this reason, we have amended the methodology in the final rule to require separate aggregates for each level of government. This requirement allows Grantees some flexibility in shifting funding among programs but prevents funding increases at one level of government from supplanting funding at another level. We have also amended the application process at § 98.13 to reflect this change.

We expect that determining the required level of expenditure will be difficult. However, we also expect that such information would be necessary as part of the process of determining the need for services and related activities in designing a Block Grant program. Given Congress' strong interest in expanding services and not displacing existing Federal, State, and local funding for services, these expenditures will be closely monitored and reviewed as a basis for continued Block Grant funding.

In determining the level of expenditures during the base period and subsequent periods, the lead agency must consider Federal, State, and local programs, as appropriate. Differing fiscal or program years may add to the level of difficulty in establishing the amount of expenditures. To facilitate administration of this provision, a Grantee may use different base periods for establishing the aggregate levels of expenditures. Section 98.53(b)(1) of the regulation provides the flexibility to use different base periods on a program-by-program basis (e.g., for a specific early childhood development program), on a level-of-government basis (e.g., Federal, State and local), or on some other basis that provides for fiscal accountability. However, even if different base periods are used, each must include the month referred to in paragraph (b)(1) of this section.

Grantees must include the levels of expenditures in each yearly Block Grant Application, pursuant to § 98.13(a)(8). In determining whether a Grantee has met the supplementation requirement, we will compare the aggregate level of expenditures for each level of government for the base period with the aggregate amount of expenditures during subsequent periods.

Reductions in expenditures for some services or programs included in the level of expenditure computation will not necessarily mean that this requirement is not met. The statutory

language at section 658E(c)(2)(J) uses the term "amount of * * * funds" in describing this limitation. We interpret this to mean that it is the aggregate level of expenditures for each level of government which is of concern, rather than individual expenditures within the aggregate. This approach provides flexibility in meeting families' needs, maintains the integrity of the provision, and meets the purpose of providing funding for new and enhanced child care and development services.

Reduction in Federal Expenditures

We will consider reductions in Federal expenditures resulting from actions outside the discretion of the Grantee in determining whether a Grantee has met this requirement. In such cases, Grantees should include information regarding the nature, extent and basis for the reductions in their Applications.

Comment: A few commenters requested that, in addition to considering reductions in Federal funds, the non-supplantation provision should allow for consideration of across-the-board reductions in State and local funds. Another commenter stated that State budget problems should be considered in monitoring the non-supplantation provision.

Response: We take Federal reductions into consideration because they are beyond State control. However, when a State or locality makes reductions in its own budget, it has discretion and control over how and where those cuts are made. Therefore, we have not changed the regulation.

When we monitor this requirement, we will consider the facts of each situation to determine if substantial non-compliance has occurred. For example, in the case where a State could not meet the requirement because a locality had supplanted funds, we would consider the actions taken by the State in regard to the locality and the amount of the decrease in determining whether substantial non-compliance had occurred.

Comment: Several Tribes asked about the treatment of reductions in State grants to the Tribe which are outside the Tribe's control.

Response: We will treat reductions in State funding to Tribes in the same manner that we treat Federal reductions. In such cases, a Tribe should include information on the nature, extent and basis for the reductions in its Application. We include this clarification in the regulation at paragraph (b)(6).

Restrictions on the Use of Funds (Section 98.54 of the Regulations)

This section of the regulations includes specific restrictions on the use of Block Grant funds, as contained in the Act. We have also added a general restriction which provides that costs which violate a Grantee's own laws and procedures must not be charged to the program.

Construction

Section 658F(b) of the Act prohibits the use of Block Grant funds for the purchase or improvement of land or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility. We interpret this prohibition to apply to all activities of the program, both administrative and programmatic.

Funds may be expended for permit minor remodeling costs. We permit Grantees to define "minor remodeling," but encourage them to set specific dollar limits.

Section 658F(b)(2) of the Act also prohibits sectarian agencies and organizations from using Block Grant funds for the purchase or improvement of land or for the purchase, construction or permanent improvement (other than minor remodeling) of any building or facility; in addition, such an organization may receive funds for renovation and repair involving minor remodeling only where necessary to bring a facility into compliance with the health and safety requirements established pursuant to section 658E(c)(2)(F) of the Act.

We note that these restrictions regarding construction costs apply to all Block Grant funds including funds under section 658G(2) of the Act which permits Grantees to use Block Grant funds to assist providers in meeting applicable State and local child care standards, which may include health and safety requirements.

Paragraph (b)(1) of this section provides that costs of minor remodeling may include, but are not limited to, costs related to bringing a facility into compliance with child care standards, including applicable health and safety requirements.

Tuition

Section 658M(b) of the Act establishes restrictions on the use of Block Grant funds for tuition provided to students in grades 1 through 12. The regulation at § 98.54(c) implements these restrictions.

Sectarian Purposes and Activities

The regulation at § 98.54(d) implements section 658M(a) of the Act. It provides that Block Grant funds shall

not be used under any grant or contract for any sectarian purpose or activity, including sectarian worship and instruction. This prohibition covers all child care services provided under grant or contract, including child care services under § 98.50, as well as early childhood development and before- and after-school care services. This prohibition also covers other activities funded through grant or contract under §§ 98.50 and 98.51. However, where services are provided through child care certificates, as defined in the regulation at § 98.2(j), sectarian activities which are part of the child care services may be conducted, and costs related to such services are eligible for funding under the Block Grant program. Sectarian providers may carry out any sectarian activities without restricting their eligibility for certificates under the Block Grant program.

Comment: A few commenters recommended making § 98.54(d) consistent with § 98.2(j) by replacing the phrase, "all such sectarian purposes or activities," with "sectarian child care services." Others suggested that child care providers which receive certificates should not be able to include any sectarian activities or worship. A third group of commenters supported allowing parents and sectarian providers to use their child care certificates or funds received via child care certificates without restriction.

Response: The referenced language at § 98.2(j) is intended to make it clear that certificates can be expended for care provided by a sectarian organization or sectarian child care provider. Section 98.54(d) restricts funds under grant or contract from being used for sectarian purposes. Although related, these provisions serve different purposes.

Section 658M of the Act states that care provided under grant or contract may not include sectarian worship or instruction. This clearly implies that care provided via certificate may include sectarian activities. We have clarified the regulation at § 98.54(d) so it is clear that child care paid for by funds provided through child care certificates may include sectarian activities or worship.

In addition, as discussed at § 98.51, Grantees may contract with or provide grants to sectarian organizations or sectarian child care providers. However, such providers could not use the funds provided under a grant or contract for sectarian purposes. Section 98.54(d) clearly states this limitation.

Comment: A few commenters asked that we clarify that sectarian providers which receive a grant or contract under the Block Grant are prohibited from

providing sectarian worship and instruction even when the same provider accepts Block Grant child care certificates.

Response: Under the Act and regulation, funds received under grant and contract may not be used for sectarian purposes, including worship. However, nothing in the Act or regulation prevents a sectarian organization from using other funds, including funds from certificates, for sectarian activities.

Other Restriction

In addition, Grantees may not use Block Grant funds as the required match for other Federal grant programs since the Block Grant's authorizing legislation gives no such authority. In the interim final rule, we stated this policy, but apparently our discussion was not sufficiently clear, so we have added the regulation at § 98.54(e).

Cost Allocation (Section 98.55 of the Regulations)

To ensure that Grantees use Block Grant funds only for the purposes of this program, and that Block Grant funds supplement, not supplant, other funds, we require that Grantees and subgrantees prepare and keep on file amended cost allocation plans or indirect cost agreements, as appropriate, to include Block Grant costs. Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

The regulations do not require Federal approval of cost allocation plans or indirect cost agreements of Grantees and subgrantees. However, where Block Grant costs are included in a cost allocation plan or indirect cost agreement requiring Federal cognizant agency approval, such plans or agreements continue to be subject to Federal approval requirements established through other applicable Federal regulations. All cost allocation plans and indirect cost agreements are subject to review by auditors and Federal reviewers.

Like other administrative costs, indirect costs are subject to the limitation on non-service expenditures at § 98.50(d). Grantees using indirect cost agreements to assign indirect costs should consult with their cognizant agency if they have questions with respect to their indirect cost agreements.

Comment: A few commenters wanted us to provide more guidance regarding Tribal indirect cost rates. The commenters were particularly

concerned that they be able to recover all indirect costs.

Response: For most Tribes, their annual allotment includes sufficient funds to recover all indirect costs. Tribal allotments contain all funds which the Tribe is eligible to receive. Because funds are limited by a Tribe's annual allotment, Tribal Grantees must carefully plan their programs and consider all costs. There are no additional funds available.

For example, if certain activities entail relatively high direct costs, then there may be insufficient funds to cover all indirect costs. The Tribe should consider altering the mix of services in its program to ensure the full recovery of their indirect costs.

Finally, we have provided each Tribal Grantee with a base amount of funds which may be used to cover administrative expenditures, including indirect costs. A primary reason we provided a base amount to Tribal Grantees was to ensure that Tribes would have sufficient funds to manage the Block Grant program.

Comment: Several commenters asked how a Tribe recovers indirect costs when the Tribe itself is the child care provider.

Response: The payment rate for child care services established by the Tribe should include indirect costs of a Tribal-run child care facility. In other words, the Tribal center's indirect costs would be assigned to the Block Grant through the child care payment rate. Activities or costs (e.g., space, personnel and accounting services, etc.) included in the indirect cost rate should not also be claimed as a specific item in the computation of these payment rates. Otherwise, the Tribe would be double-charging for these types of costs.

Subpart G—Financial Management

Availability of Funds (Section 98.60 of the Regulations)

Grant Awards

Section 658J(a) of the Act provides that the Secretary will award Block Grant funds subject to the availability of appropriations. The regulations in this section provide that awards will be made in accordance with the apportionment by OMB. Since the timeframes were short in FY 1991, we issued the funds apportioned by OMB through grant awards to Grantees that had approved Plans and those that applied for funds, but did not have approved Plans. Grantees that did not have approved Plans, however, were not able to "draw down" funds until we approved their Plans. In future years, we expect to issue grant awards only to

Grantees that have approved Applications and Plans as described in §§ 98.13 and 98.16.

If possible, grants will be issued to Grantees in advance. However, the Secretary reserves the right to issue grants by way of reimbursement, as provided in the Act. The Block Grant program does not require matching funds from Grantees.

We have added language at paragraph (a) of this section to provide that we may reserve up to one-quarter of one percent of each fiscal year's appropriation for the purpose of providing technical assistance. We discuss this provision in the section entitled "Technical Assistance." This provision does not affect FY 1991 allotments.

Under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991 (Pub. L. 101-517), FY 1991 funds became available on September 7, 1991. Because funds did not become available until the last month of FY 1991, all Grantees received their entire FY 1991 allotment in one grant award, issued before September 30, 1991, the end of FY 1991. We will continue this practice in FY 1992 since FY 1992 funds do not become available until September 30, 1992, and in subsequent years when availability of the appropriations occurs in the fourth quarter of the fiscal year.

Obligation Period/Liquidation Period/Program Period

Under the Direct Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and Other Urgent Needs Act of 1991 (Pub. L. 102-27), Congress revised the provision of the Act at section 658J(c) governing the period of time over which State and Territorial Grantees could expend funds. Under the original language, State and Territorial Grantees had to expend their allotments in the fiscal year in which they were received, or in the succeeding fiscal year. Under the amendment, State and Territorial Grantees must only obligate their funds during this period. The Act, as amended, is silent regarding the period of time State and Territorial Grantees would have to liquidate their unliquidated obligations. Under paragraph (d) of this section, we allow one additional year for the liquidation of obligations. The one-year liquidation period should give State and Territorial Grantees sufficient flexibility in administering the program and sufficient opportunity to process payments to

contractors for services and activities. The one-year liquidation period is comparable to, or longer than, the liquidation period provided under other programs administered by ACF. It also is compatible with the schedule the Act establishes for submitting annual reports on Block Grant expenditures, as discussed in subpart H.

As discussed above, FY 1991 Block Grant funds became available during the last month of FY 1991 and the same will occur in FY 1992. For these and any other fiscal year's funds that do not become available until late in the fiscal year, the obligation period is actually less than two years. The later the availability of the funds, the less time State and Territorial Grantees have to obligate them. For example, in FY 1991, Grantees received grant awards after September 7, 1991, and thus had approximately three weeks in FY 1991 plus 52 weeks in FY 1992 during which to obligate their funds.

However, if Block Grant funds become available at the beginning of the fiscal year, State and Territorial Grantees have that entire fiscal year and the succeeding fiscal year (i.e., 104 weeks) in which to obligate their grants. In the succeeding fiscal year, State and Territorial Grantees would receive additional funds which, likewise, must be obligated during that fiscal year and the succeeding fiscal year.

Unliquidated obligations as of the last day of the obligation period must be liquidated in the following one-year liquidation period. We use the term program period to describe the period in which a fiscal year's grant must be expended, i.e., the obligation period and the following one-year liquidation period.

In the final rule, we no longer require that Tribal Grantees obligate their funds by the end of the second fiscal year. Instead, we allow Tribal Grantees the entire program period in which to both obligate and liquidate their grants. We made this change because we believe the two fiscal year obligation period required in the interim final rule was too restrictive since Tribal Grantees have fewer options than State and Territorial Grantees for using their funds and are more likely to provide child care services directly (e.g., Tribal-run child care centers).

Having the entire program period in which to obligate and liquidate their allotments means Tribal Grantees may obligate and liquidate their funds during the fiscal year in which they receive their allotments and during the succeeding two fiscal years. Any funds that remain unexpended by the end of

the third fiscal year will revert to the Federal government. This three fiscal year period is consistent with the statutory language at section 858O(c)(4) of the Act that limits grants to Tribes to periods not to exceed three years.

For example, Tribal Grantees have until the end of FY 1993 to obligate and liquidate their FY 1991 grant funds. They are not required to obligate their funds before the end of FY 1992, but must liquidate all obligations before the end of FY 1993. Any unexpended funds as of the last day of FY 1993 will revert to the Federal government.

Obligations

We define obligation to include subgrants or contracts which will require the payment of funds from the State or Territorial Grantee to a third party (e.g., subgrantee or contractor). For this purpose, the following are not considered third party subgrantees or contractors: (1) a local office of the lead agency; (2) another entity at the same level of government as the lead agency; or (3) a local office of another entity at the same level of government as the lead agency. For example, if a State Grantee transferred a portion of its funds to the State Department of Education, we would not consider those funds to be obligated. The State Department of Education would have to obligate the funds for Block Grant administration, services, or activities in order for the funds to be considered obligated. This policy is based on the definition of Grantee, which includes the entire legal entity, even if a particular component of the entity is designated in the grant award document.

For purposes of the Block Grant, child care certificates obligate funds if they indicate in writing (1) the amount of funds that will be paid to a child care provider or family for child care services and (2) the specific length of time covered by the certificate. The amount of funds obligated by the child care certificate is the amount for which the issuer (Grantee or subgrantee) has an obligation to pay, subject to the actual delivery of child care services. The length of time covered by the certificate begins once the certificate is issued and covers the time period during which the issuer is obligated to pay, subject to the actual provision of child care services and the dollar limit on the certificate. This time period may not extend beyond the date when the family's eligibility for the Block Grant program must be redetermined, if required. In no case may funds be obligated beyond the end of the liquidation period.

For example, if the Grantee or subgrantee requires a family's eligibility

to be redetermined every six months, only the funds necessary to provide up to six months of child care services would be considered obligated. Even if the Grantee or subgrantee intends to provide child care services to the family for 12 months and has encumbered or otherwise reserved the funds necessary to provide 12 months of child care services for the family, only the funds necessary to provide up to six months of services would be considered obligated if the family's eligibility for child care services under the Block Grant is redetermined every six months.

Like all obligations, child care certificates must be liquidated by the last day of the liquidation period. Therefore, the length of time covered by the certificate cannot extend beyond the last day of the liquidation period, subject to possible adjustments as discussed below. Likewise, if the Grantee or subgrantee that issues child care certificates does not require a family's eligibility to be redetermined, the length of time for which a certificate may be issued cannot extend beyond the last day of the liquidation period.

We alert Grantees that in order to ensure the liquidation of child care certificates, they must allow sufficient time for the last payment under the certificate to be recorded as a liquidation before the end of the liquidation period. For example, if the Grantee requires 30 days to process payment under the certificate, a certificate obligating FY 1991 funds should expire no later than August 31, 1993 (i.e., 30 days prior to the deadline for liquidating obligations of FY 1991 funds).

It is possible that a family may cease to be eligible during the period for which the certificate is issued. We recommend that Grantees or subgrantees indicate on their certificates that the certificate is valid only as long as the family continues to be eligible to receive child care services. Funds obligated to families that become ineligible to receive Block Grant child care services during the period of the certificate should be deobligated by cancelling the certificate and may be reobligated in accordance with paragraph (h) of this section. A family that is no longer eligible to receive child care services under the Block Grant, but continues to have its child care provided through its child care certificate is subject to the fraud provisions at paragraph (j) of this section.

The requirement that State and Territorial Grantees obligate their funds by the end of the fiscal year that follows the fiscal year in which the grant is awarded applies only to the State or

Territorial Grantee. The requirement does not extend to the Grantee's subgrantees or contractors unless State or local laws or procedures require obligation in the same fiscal year.

Grant funds that remain unobligated by the State or Territorial Grantee at the end of the obligation period will revert to the Federal government. Obligated grant funds that remain unliquidated by the State or Territorial Grantee after the last day of the program period will also revert to the Federal government. Although this policy was stated in the preamble to the interim final rule, it was not stated in the regulation. Therefore, we have added it to the final rule at paragraph (d) of this section.

Comment: One commenter suggested that we give Grantees 24 months to obligate funds regardless of when the grant award is issued.

Response: Section 658(c) of the Act, as amended by Congress, specifies that Grantees have the fiscal year in which the funds are awarded and the succeeding fiscal year during which to obligate the funds. Grantees would have two years to obligate Block Grant funds if funds were made available at the beginning of the fiscal year for which the funds were appropriated. Congress, however, has chosen so far to delay the availability of the funds which has resulted in obligation periods of less than 24 months.

Comment: Many commenters asked whether governmental entities at the local level, such as county-administered social services districts, are eligible subgrantees for the purpose of determining what constitutes an obligation.

Response: We have received numerous questions regarding the definition of an obligation for purposes of the Block Grant program. As stated above, a "local office of the lead agency or a local office of another entity at the same level of government as the lead agency" is not considered a subgrantee for this purpose. If county-administered social service districts are not local offices of the lead agency and are not local offices of another office that is at the same level of government as the lead agency, grants issued to such districts are considered obligations.

This definition is more restrictive than the definition of "obligation" at 45 CFR 92.3 which provides that "obligations" include "contracts and subgrants awarded" and may be more restrictive than definitions in State or local law. However, since Block Grant obligations may not include a subgrant or contract with (1) a local office of the lead agency, (2) another entity at the same level of

government as the lead agency, or (3) a local office of another entity at the same level of government as the lead agency, these restrictions are incorporated in the regulation at paragraph (d)(2) of this section. Thus, State or local law pertaining to "obligations" applies only insofar as the laws do not conflict with paragraph (d)(2) of this section. If there is no State or local law, the definition at § 92.3 applies, but again, only insofar as the definition does not conflict with paragraph (d)(2) of this section.

Comment: A few commenters wanted us to clarify at what governmental level an obligation had to be liquidated in order for a Grantee to meet the liquidation period requirements.

Response: Grantees must liquidate all obligations on or before the last day of the appropriate liquidation period. While this responsibility lies with the Grantee, the effect of this requirement is that subgrantees may be required to liquidate obligations by the end of the liquidation period applicable to the Grantee in order for the Grantee to meet the liquidation deadline.

Comment: A few commenters asked that we permit Grantees to expend funds carried over from a previous fiscal year before expending that fiscal year's award.

Response: We permit Grantees to expend the previous year's funds before expending the next fiscal year's grant. In fact, we advise and encourage Grantees to manage their programs in this manner. However, the time during which two obligation periods overlap is very short, since Block Grant funding becomes available near the end of the fiscal year.

For example, the obligation period for FY 1991 grant funds ends on September 30, 1992, and FY 1992 funds become available on that same date. Therefore, on September 30, 1992, Grantee may obligate or expend either its FY 1991 or FY 1992 grants. The regulation allows Grantees to obligate or expend the FY 1991 grant before the FY 1992 grant.

The term "carryover" means that funds granted in one fiscal year may be added to a succeeding fiscal year's grant. Other ACF programs such as the Low Income Home Energy Assistance Program (LIHEAP) and the Social Services Block Grant (SSBG/Title XX) permit the carryover of funds. There are, however, no such carryover provisions under the Block Grant since the Act did not provide for the carryover of funds past a grant's obligation period.

Advance funding. To ensure that Grantees expend Block Grant funds in accordance with sound cash management principles, paragraph (f) of this section requires them to adhere to

the procedures established in 31 CFR part 205. These regulations establish principles to ensure that the timing and amount of cash advances are as close as is administratively feasible to the actual disbursement of program funds. Departmental regulations and procedures provide various remedies for Grantees, subgrantees, and contractors that fail to adhere to Federal cash management principles. These remedies include paying the Grantee on a reimbursement basis.

Comment: One commenter stated that limiting advance funding to immediate cash needs conflicts with the program's intended purposes of providing loans and development funds. The commenter recommended that we issue the 25 percent portion of funds in a lump sum to Grantees as we do for the Dependent Care Planning and Development Grants.

Response: We disagree that limiting advance funding to immediate cash needs is in conflict with the purposes of the Block Grant and do not believe a change is warranted. We continue to require Grantees to follow U.S. Treasury rules for financial management. We do not agree with the commenter that the nature of the activities funded under the 25 percent portion is sufficiently different from those under the 75 percent portion to warrant different rules for administering those funds. In addition, with the implementation of electronic transfer, we do not believe the rule impedes the Grantee from carrying out the purposes of the program. Since the entire Grantee allotment is issued in one grant, as opposed to quarterly, Grantees can draw down sufficient funds as needed to provide cash for loans and development funds. The Dependent Care Planning and Development program cited by the commenter is a small program (approximately \$13 million appropriated in FYs 1991 and 1992) that grants funds to States to support activities related to dependent care (including child care, elder care, and care for disabled individuals), resource and referral systems and activities related to school-age child care services. While this program is for similar purposes as the 25 percent portion (§ 98.51), (e.g., resource and referral development and the planning, development, establishment, or expansion of school-age child care services), it is funded at one-fourteenth the level of this portion of the Block Grant. Because the amount of funds involved under the Block Grant is so much greater, we do not believe it would be responsible financial management to issue funds for the 25 percent portion of a Grantee's allotment in a single sum.

Pre-award costs. Block Grant funds are available for use by the Grantee only after the funds for a fiscal year are made available by the Congress for Federal obligation. No pre-award costs, i.e., costs incurred by a Grantee during a fiscal year before that fiscal year's funds become available, are allowed unless the costs are incurred for planning activities related to the submission of an initial Block Grant Application and Plan. Such planning activities must occur after November 5, 1990, if Block Grant funds are to be used, but are not required to have been incurred during the same fiscal year in which the funds are awarded. For example, FY 1992 funds which become available on September 30, 1992, may be used by a Grantee who is preparing an initial Block Grant Application and Plan for costs associated with the planning and development of such an Application and Plan if the costs were incurred after November 5, 1990. Furthermore, we recognize that the use of the word "obligation" in paragraph (g) of this section in the interim final rule did not express this intent. Therefore, we have replaced it with the word "use."

Comment: Several commenters asked that we permit Grantees to use Block Grant funds prior to the date when funds for a fiscal year become available.

Response: By making Block Grant funds available in the last month of a fiscal year, Congress expressly limited the time period during which the funds are available to Grantees (e.g., one year and a day in FY 1992) and, in effect, provided that a fiscal year's funds primarily be used in the following fiscal year. For example, FY 1992 funds are to be used for FY 1993 costs. Thus, given the Congressional intent behind the availability of Block Grant funding, we do not permit Grantees to use Block Grant funds prior to the date when funds for a fiscal year become available.

As the Federal government may only obligate funds after they become available, pursuant to the Anti-Deficiency Act, 31 U.S.C. 1341, Federal obligation of funds for all costs, including pre-award costs, is subject to the actual availability of the appropriation.

Funds Returned to the Grantee or Subgrantee and Program Income

Examples of funds returned to the Grantee or subgrantee include loan repayments, contracts terminated through default or for convenience, funds deobligated by cancellation of a child care certificate issued to a family when the family becomes ineligible for child care services, and unused

subgrantee grants returned to the Grantee. Program income includes contributions by families under the sliding fee scale made directly to the Grantee or subgrantee for the cost of care where the Grantee or subgrantee has made a full payment to the child care provider, and any other program income the Grantee or subgrantee collects while carrying out its Plan. For purposes of determining whether the child care provider receives 80 percent or more of its operating budget from Federal or State funds, pursuant to §§ 98.46 and 98.47, family contributions are not considered funds provided under the Block Grant or any other Federal or State program.

If a subgrantee or contractor returns all or part of its funds to a Grantee, or a contractor returns all or part of its funds to a subgrantee, during the program period for which the funds were allotted, the Grantee or subgrantee may use those funds, but only for activities specified in the Grantee's Plan.

If the funds are returned during the obligation period, they must be obligated by the end of the obligation period. If they are returned during the liquidation period, the funds may not be obligated unless State or local laws or procedures permit. If permitted, the obligations must be liquidated by the end of the liquidation period.

If a subgrantee or contractor returns funds to the Grantee, or a contractor returns funds to a subgrantee, after the end of the program period for which those funds were allotted, the Grantee or subgrantee may use those funds for activities specified in the Grantee's Plan, if State or local laws or procedures governing the use of such funds allow their use. If there are no State or local laws or procedures, Federal law will apply, and thus the funds shall be returned to the Federal government.

Loan Repayment

Funds used for loans to child care providers, pursuant to § 98.51(b)(2)(ii), may be repaid in cash or in services provided in-kind. The services provided in-kind must be of equivalent value to the amount of the loan and based on fair market value. All loans must be repaid in full.

Recovery of Child Care Payments

We received a comment about child care payments made as the result of fraud or error (see § 98.92) and believe clarification of the policy regarding recovery of such payments is necessary. The Grantee must recover child care payments which are the result of fraud committed by child care providers or parents. Payments made as the result of

fraud committed by a child care provider must be recovered from the child care provider. Likewise, payments made as the result of fraud committed by a parent must be recovered from the parents. We have added this provision at § 98.60(i).

Any child care payments not made in accordance with the Act, the implementing regulations, or the Grantee's approved Plan may not be charged to the Block Grant program and will be disallowed pursuant to § 98.66. Recovery from child care providers or parents of child care payments made in error is at the Grantee's discretion.

Allotments for States (Section 98.61 of the Regulations)

Section 658O(b) (1) through (4) of the Act establishes the formula for determining the size of the allotment for State Grantees. For the purpose of this section and § 98.63, the term "States" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The amount of funds available to States is equal to the full appropriation less the amounts reserved for Territorial and Tribal Grantees and technical assistance.

Because of the many comments received on redistributing the funds reserved for Territorial and Tribal Grantees to State Grantees, we have revised the regulation to provide that these funds will be distributed only to those groups respectively. We will distribute the funds reserved for Territorial Grantees only to Territorial Grantees. Likewise, we will distribute the funds reserved for Tribal Grantees only to Tribal Grantees. None of these funds will be distributed to State Grantees.

State Allotment Formula

The formula we are using to allot Block Grant funds to States is specified in section 658O(b) (1) through (4) of the Act. There are three factors: a Young Child factor, a School Lunch factor, and an Allotment Proportion factor.

A State's Young Child factor (YCF) is the ratio of the number of children under the age of five in the State to the number of such children in all States.

A State's School Lunch factor (SLF) is the ratio of the number of children in the State who are receiving free or reduced price school lunches under the National School Lunch Act to the number of such children in all States.

As required by the Act, we will use the most recent population data from the Bureau of the Census in computing State Young Child factors and the most recent data from the U.S. Department of

Agriculture to compute State School Lunch factors.

For FY 1991 allotments, we used 1989 Census population estimates for the 50 States and the District of Columbia to determine the number of children under the age of five in each State. No such estimates existed for Puerto Rico, so we used the most recent available data, the 1980 Census data. We will use 1990 Census data when they become available for use in the State allotment calculation. For the School Lunch factor, we used school lunch participation figures for FY 1990.

The third factor in the formula is the Allotment Proportion factor (APF). The Act refers to this factor as the Allotment Percentage. A State's APF is determined by dividing the three-year average per capita income of all individuals in all the States by the three-year average per capita income of all individuals in the State. The APF cannot be less than 0.8 or greater than 1.2. If it is less than 0.8 when calculated, the State's APF is adjusted upward to equal 0.8. If it is more than 1.2 when calculated, it is adjusted downward to equal 1.2. The APF will be determined every two years and applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year. As required by section 658O(b)(4)(C)(iii) of the Act, we will use the best data available from the U.S. Department of Commerce. For FY 1991 allotments, we used per capita income data for FYs 1987, 1988, and 1989.

While the U.S. per capita personal income figure usually includes the District of Columbia, it does not typically include Puerto Rico. Since Puerto Rico is considered a State for purposes of this section, we have added Puerto Rico to the per capita personal income figure for the U.S., and the allotments are calculated using this figure.

Mathematical Equation for Determining State Allotments

A State's allotment is the sum of the following two products:

$$1. \frac{YCF_i \times APF_i}{\sum (YCF_i \times APF_i)} \times \frac{\text{total amount available for States}}{2}$$

(where YCF_i is equal to the State's Young Child factor and APF_i is equal to the State's Allotment Proportion factor); and

$$\frac{\text{SLF}_i \times \text{APF}_i}{\sum (\text{SLF}_i \times \text{APF}_i)} \times \frac{\text{total amount available for States}}{2}$$

(where SLF_i is equal to the State's School Lunch factor and APF_i is equal to the State's Allotment Proportion factor). Each State's share of the total allotment will change from year to year based on changes in the available data.

Explanation of State allotment formula

A State's allotment is determined in a two-step process. First, part of a State's allotment is determined by:

- (1) Multiplying the individual State's Young Child factor (YCF) by the State's Allotment Proportion factor (APF);
- (2) Dividing the product in #1 by the sum of the products of all States' YCF's multiplied by their respective APF's; and
- (3) Multiplying the quotient in #2 by one-half of the total amount of Block Grant funds available for distribution to States. This is the Young Child factor Allotment.

The second part of a State's allotment is determined by:

- (1) Multiplying the individual State's School Lunch factor (SLF) by the State's Allotment Proportion factor (APF);
- (2) Dividing the product in #1 by the sum of the products of all States' SLF's multiplied by their respective APF's; and
- (3) Multiplying the quotient in #2 by one-half of the total amount of Block Grant funds available for distribution to States. This is the School Lunch factor Allotment.

A State's allotment is the sum of its Young Child factor Allotment and its School Lunch factor Allotment.

We have not included a description of the State Allotment formula in the regulation because it is clearly delineated in the Act.

Allotments for Territories and Tribes (Section 98.62 of the Regulations)

Territories

Section 658O(a)(1) of the Act provides that not more than one-half of one percent of the Block Grant funds may be reserved by the Secretary for the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau). The Commonwealth of Puerto Rico is treated as a State for purposes of the Block Grant allotment, pursuant to § 98.61(a) and 658O(f) of the Act.

The Secretary exercised his administrative discretion and reserved, for FY 1991 funds, the full one-half of

one (0.5) percent of funds for the Territories as Congress authorized up to one-half of one percent, and there was no reason for a lesser amount in FY 1991.

Territorial Allotment Formula

The Act does not specify an allotment formula for Territories. The formula we are using to allot Block Grant funds to Territories is similar to the formula specified for States in the Act. However, in place of the three-factor State formula discussed in the preamble to § 98.61 (i.e., a Young Child factor, a School Lunch factor, and an Allotment Proportion factor), the Territorial allotment formula has just two factors—a Young Child factor and an Allotment Proportion factor.

A Territory's Young Child Factor (YCF) is the ratio of the number of children under the age of five in the Territory to the number of such children in all Territories. We chose not to include a school lunch factor in the Territorial formula because some of the Territories no longer participate in the National School Lunch program and others are phasing out their programs.

For FY 1991 allotments, we used 1980 Census data to determine the number of children under the age of five in each Territory, as they were the best available data. We will use 1990 Census data as they become available to determine Territorial allotments in subsequent years.

The second part of the Territorial formula is the Allotment Proportion factor (APF). A Territory's APF is determined by dividing the three-year average per capita income of all individuals in all the Territories by the three-year average per capita income of all individuals in the Territory. The APF cannot be less than 0.8 or greater than 1.2. If it is less than 0.8 when calculated, the Territory's APF is adjusted upward to equal 0.8. If it is more than 1.2 when calculated, it is adjusted downward to equal 1.2. This adjustment parallels the process applied to State Allotment Proportion factors. The regulations at (a)(1)(ii) (A) and (B) of this section provide that the APF will be determined every two years, and will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

For FY 1991 Territorial allotments, we used per capita income data for FYs 1987, 1988, and 1989 from the Bureau of Economic Analysis in the Department of Commerce. The per capita income for all individuals in all Territories reflects only the five Territories listed in paragraph (a) of this section. Puerto Rico's per capita income was excluded

since Puerto Rico is considered a State for allotment purposes.

In FYs 1987, 1988, and 1989, per capita income data did not exist separately for Palau, the only component of the Trust Territory of the Pacific Islands since 1988. Instead, the data reflected the combined per capita income of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands. Micronesia and the Marshall Islands are the two components that, along with Palau, comprised the Trust Territory of the Pacific Islands prior to 1988.

We do not believe that using the data that includes Micronesia and the Marshall Islands affects Territorial allotments. When these data were used in the calculation, the APF for the Trust Territory of the Pacific Islands is over five percent. Since limits on the APF specify that it must be between 0.8 and 1.2, the Trust Territory's APF is adjusted downward to 1.2.

We believe that even if data on per capita income for Palau alone were available, the APF for the Trust Territory of the Pacific Islands would still have to be adjusted downward and thus would be the same. For example, if the APF were higher than 5 percent, it would still be limited to 1.2. On the other hand, it is unlikely that the APF would be lower than 1.2 given the economic conditions of the Trust Territory in general compared to other Territories.

In future years, should per capita income data representing Palau as the only remaining component of the Trust Territory of the Pacific Islands be available, we will use it in the Territorial allotment calculation.

Mathematical Equation for Determining Territorial Allotments

The formula used in calculating a Territory's allotment is as follows:

$$\frac{\text{YCF}_i \times \text{APF}_i}{\sum (\text{YCF}_i \times \text{APF}_i)} \times \frac{\text{amount reserved for Territories at paragraph (a) of this section}}{2}$$

(where YCF_i is equal to the Territory's Young Child factor and APF_i is equal to the Territory's Allotment Proportion factor).

Explanation of Territorial Allotment Formula

A Territory's allotment is determined by:

- (1) Multiplying the individual Territory's Young Child factor (YCF) by the Territory's Allotment Proportion factor (APF);
- (2) Dividing the product in #1 by the sum of the products of all Territories'

YCF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by the amount of funds reserved for the Territories.

The resulting product in #3 is the Territory's allotment.

Tribes

Section 658O(a)(2) of the Act provides that not more than three percent may be reserved by the Secretary for Indian Tribes and Tribal organizations. Only Tribes and Tribal organizations that are recognized in section 4(e) and section 4(l), respectively, of the Indian Self-Determination and Education Assistance Act are eligible for Block Grant funds. (See § 98.80 (b) and (c) for a complete discussion of Tribes and Tribal organizations which are eligible for Block Grant funds.) The Secretary exercised his administrative discretion and reserved the full three percent of FY 1991 funds for Tribes, as Congress authorized up to three percent, and there was no reason for a lesser amount in FY 1991.

The regulation provides that Tribes must have 50 or more children under age 13 (or such similar age as determined by the Secretary from the best available data) in order to receive funding under the Block Grant. (See § 98.80 for a full discussion of this requirement and comments.) Tribes with fewer than 50 children under age 13 may apply for funds as members of a consortium. Consortia must have 50 or more children under age 13 in order to receive funding. Individual Tribes with 50 or more children under age 13 may apply individually or as part of a consortium.

In FY 1991, we defined the number of Indian children for the purposes of Tribal eligibility for funding and for calculating FY 1991 Tribal grant awards, as the number under the age of 16. We included the number of children under the age of 16 because the best available data did not include a breakdown of the population under age 16. Use of the under-16 data for allotment purposes does not extend the age of eligibility for an Indian child. We still require Indian children to be under the age of 13 to be eligible for child care services under the Block Grant, unless the Tribe or Tribal organization provides child care services for eligible older children in their Plan (i.e., children with mental or physical disabilities).

Our data sources for FY 1991 allotments were: (1) the 1989 Indian Service Population and Labor Force Estimates Report produced by the Bureau of Indian Affairs (BIA); and (2) 1990 census data provided by the State of Alaska. The 1989 BIA Labor Force

Estimates Report represented the best data available on Tribes, with the exception of data for Alaska Native Villages. We used 1990 Census data for Tribal Grantees located in Alaska because the BIA Labor Force Estimates Report contained data for Alaska by five BIA regions only, not for each Alaska Native Village individually. In order to treat each Tribal Grantee equitably, we adjusted the 1990 census data to be comparable to the 1989 BIA data.

In future years, we will continue to investigate data sources and to use the best data available. The Secretary will make the final decision on the data to be used to determine allotments. Depending upon the data used, we might adjust the age of the children we include in future years down to a minimum age of 13 if lower age categories are available in the data used. To the extent possible, we will use data from the same source for all Tribal Grantees so that all Tribes are treated similarly.

Comment: There were many comments expressing support for changing the rule so that a full three percent of the Block Grant appropriation would be set aside for Tribal Grantees every year.

Response: It is too early to conclude that Tribal Grantees will need the full three percent of funds each year. Thus, we have decided to leave discretion for the size of the Tribal set-aside with the Secretary. In FY 1991, we set aside three percent, the maximum amount allowable in the Act for Tribal Grantees, and, in FY 1992, we will set aside the full three percent again. In future years, we will take into consideration the number of Tribal Grantees and the scope of their programs.

Tribal Allotment Formula

We allot each individually-eligible Tribe a base amount of funds as determined by the Secretary plus an additional amount of funds per child living on or near the Tribal Grantee's reservation or other appropriate area served by the Tribal Grantee.

This formula is similar to one considered by BIA for the Prevention of the Breakup and Reunification of Indian Families program. The formula is based on information provided by BIA as a result of recommendations they received from 12 workgroups—one from each of the 12 national BIA Regions/Areas in the country. These workgroups, which were made up of Tribal leaders from small and large Tribes, recommended the concept used in the formula, a minimum base amount with additional per capita funding. The underlying goal was to give Tribal Grantees sufficient

funds to enable them to operate viable programs. For this reason, as discussed at § 98.83(e), the base amount is not subject to percentage limitations on expenditures and may be expended for any program purpose.

Each year, we will issue estimates for the upcoming fiscal year and provide guidance on what the next year's base and estimated per-child amounts will be. In FY 1991, a Tribe's allotment was equal to a base amount of \$20,000 plus approximately \$52 per child under the age of 16. As stated above, use of the under-16 data for allotment purposes did not extend the age of eligibility for an Indian child. We still require Indian children to be under the age of 13 to be eligible for child care services under the Block Grant, unless the Tribal Grantee provided for child care services for eligible older children in their Plan (e.g., children with mental or physical disabilities).

For FY 1991 we set the base amount at \$20,000, because we believed this amount provided sufficient resources for a Tribal Grantee to operate a viable program, including the costs of administering the program and providing program services.

After a base amount is set aside for each eligible Tribe, we divide the remainder of the funds by the total number of Indian children, represented by the Tribes which have applied, to determine the per capita amount to be granted. In FY 1991, the per capita amount for each Indian child under the age of 16 was approximately \$52. As the Block Grant appropriation and/or the number of Indian children changes, the per capita amount may likewise change. We expect to keep the base amount at \$20,000 for the next few years.

Tribes that are not individually eligible to apply (i.e., Tribes with fewer than 50 children) may apply as part of a consortium and will receive a portion of the base amount that is equivalent to the ratio of the number of children in the Tribe to 50, plus the additional per capita amount of funds per child in the Tribe living on or near the reservation or other appropriate area served by the Tribal Grantee.

For example, in FY 1991 when a Tribe with 49 children joined a consortium, the Tribe's contribution to the consortium grant equalled $49/50$ ths of \$20,000, or \$19,600 plus $49 \times \$52.70$, or \$2,582.30. The total amount, \$22,182.30, plus the amount for each other Tribe in the consortium, was included in the grant to the consortium.

We considered using a simple per capita formula to allot Block Grant funds to Tribal Grantees, but we did not

think the amount of such funds provided under this formula was sufficient to enable smaller Tribal Grantees to operate a satisfactory program. We also considered a formula that was similar to the State and Territorial formulas which would have compared economic conditions, as measured by per capita income, among Tribal Grantees. However, after examining per capita income data for Tribes, we did not believe there was sufficient variation to justify comparing one Tribe to another in the way we compare States or Territories to each other. This option was also rejected because of a lack of acceptable data.

We considered a third option, which would have linked Tribal Grantees more closely with the economic conditions (using per capita income) of the State in which a Tribal Grant was located. We rejected this option because we believed geography was not a compelling reason to tie Tribal Grantees to States. In addition, we do not believe the economic conditions of the State in which a Tribal Grant is located necessarily reflect the economic conditions of the Tribe.

Allotments to Tribal Consortia

The allotment for a Tribal consortium is equal to the sum of the individual allotments of the Tribes in the consortium.

Comment: Several commenters expressed support for the concept of a base amount of funds in the Tribal funding formula. A few commenters, however, were also concerned that the policy of giving Tribal consortia the sum total of their member Tribe base amounts unfairly skewed too much of the funds towards Tribal consortia. These commenters recommended capping the amount of base funding a Tribal consortium could receive.

Response: We decided not to cap the amount of base funds that Tribal consortia may receive because the base amount was intended to help a Tribe cover administrative costs of each constituent Tribe or Village. We do not believe the administrative costs of operating a Block Grant program significantly decrease for Tribal consortia. We require that Tribal consortia have Block Grant services available on each of their member Tribes' reservations or Villages and believe it will cost consortia approximately the same amount as it would if the member Tribes operated separate programs. Secondly, we did not want to encourage or discourage Tribes from applying as part of a consortium based on the funding level.

Data Sources

In determining the number of children in the Territory or Tribe, we will use the most current comparable data available.

Comment: We had many comments on our use of the 1989 BIA Indian Service Population and Labor Force Estimates report. All those commenting objected to the use of the 1989 BIA report, and all had different suggestions about what alternative data sources we should use instead. Some also suggested self-reporting by Tribes as an alternative.

Response: We continue to look for a good data source for determining the number of children in each Tribe. In addition to the BIA report, that we ultimately used, we considered Bureau of Census and Indian Health Service data. We have also considered allowing Tribes to independently report (self-report) the number of children in their Tribe.

Each of the data sources mentioned, including the BIA report, has inherent problems. For the majority of Tribal Grantees, we used the BIA report for allotting FY 1991 funds because it seemed to be the least problematic of all the available options, and it most closely mirrored the information we needed. The exceptions were the Villages in Alaska and those Tribes for which the BIA report did not have data. For these Tribal Grantees we used Bureau of Census data, which we adjusted to make comparable to the BIA data.

In searching for the best available data, we were looking for a source that was uniform for all Tribes. We preferred a source that also included children who live near the Tribe's reservation in its count. And finally, we preferred a data source that would be periodically updated. None of the known available data met all of these criteria, but the BIA report came the closest.

While Census data appear to be a good option because the same methodology is used to collect data for all Tribes, Census data are unsuitable because there is great variation among Tribes that have a reservation versus those that do not, with the result that Tribes without reservations are advantaged. A second problem is that the Census counts only those children that actually live within the geographical boundaries of the reservation or other statistical area. A third problem is that Census data are only updated every 10 years. The Census Bureau does not estimate Tribal population in the intervening years between the decennial census.

As for IHS data, they are collected by IHS service delivery area and by county,

not by Tribe, so there is no way to determine the number of children in each individual Tribe.

Finally, we do not believe that independent self-reporting is a viable option because there is no way to ensure consistency among Tribes. The data in the BIA Labor Force Report are initially self-reported by Tribes, but BIA reviews the data for accuracy so the data are not entirely independently self-reported.

The regulatory language allows the Secretary to use the most appropriate data. We will continue to monitor available data in order to ensure equitable treatment of all Tribes.

Remaining Funds to Territories and Tribes

The funds reserved in a fiscal year for the Territories and Tribes will all be respectively allotted to those Territories and Tribes which apply for funding in that fiscal year. We will distribute the funds reserved for Territorial Grantees only to Territorial Grantees. Likewise, we will distribute the funds reserved for Tribal Grantees only to Tribal Grantees. None of these funds will be distributed to State Grantees.

Comment: Many commenters requested that once the Tribal set-aside is determined that those funds be distributed among Tribal Grantees alone. If all eligible Tribes do not apply, the remaining funds should be distributed to those Tribes that are receiving grants and not to non-Tribal Grantees.

Response: We have adopted the commenters' suggestion, extended it to Territorial Grantees and revised the regulations at § 98.62(c) to reflect these changes. We will distribute the funds that the Secretary sets aside for Territorial allotments in full to Territorial Grantees and those funds set aside for Tribal allotments in full to Tribal Grantees. We will not allot any of the Territorial set-aside to non-Territorial Grantees, or any of the Tribal set-aside to non-Tribal Grantees.

Comment: One commenter requested that we allow Tribal Grantees to carry over funds past the obligation period.

Response: The commenter's request seeks additional flexibility in the use of Block Grant funds by Tribal Grantees. We believe that this need has been addressed by the revision to the regulation at § 98.60(e) which provides that Tribal Grantees are no longer required to adhere to the obligation period requirement. Instead, Tribal Grantees have three fiscal years to expend their grants (see preamble to § 98.60 for further discussion).

Comment: Several commenters suggested that we either adjust or eliminate the requirement that Tribal Grantees expend 75 percent of their funds on activities specified under § 98.50 and 25 percent on activities specified under § 98.51. Other commenters recommended that we give more flexibility with regard to the amount allowed for administrative costs.

Response: We have adopted the commenters' suggestion and changed the 75/25 requirement as it applies to Tribal Grantees. For Tribal Grantees receiving grants of greater than \$225,000, the 75/25 requirement for the per capita portion of its grant still applies. However, for Tribal Grantees receiving less than \$225,000, the 75/25 requirement no longer applies. Instead, Tribal Grantees must spend at least 63.75 percent of the per-child amount of their grants on child care services, and no more than 36.25 percent for administration and other Block Grant activities. The base amount of \$20,000 is still available for any costs allowable under the Block Grant, including administrative costs. (See § 98.83 for further explanation of these provisions.)

The changes outlined at § 98.83 give Tribes greater flexibility in operating the Block Grant program.

Reallotment (Section 98.63 of the Regulations)

Under section 658O(e)(1) of the Act, any portion of a State's allotment that is not required to carry out its Plan in the period for which the allotment is made available shall be reallotted, in proportion to the original allotments, to the other States. For purposes of this section and § 98.61, the term "State" includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, pursuant to section 658O(f) of the Act.

The Act requires the Secretary to determine the portion of a State's allotment which is not required to carry out the State's Plan. We will make such determinations based upon reports submitted by the States, pursuant to paragraph (a)(1) of this section. Each State must submit a report to the Secretary indicating either the amount of funds from the previous year's grant it will be unable to obligate during the remainder of the obligation period, or that all funds will be obligated prior to the end of the obligation period. These reallotment reports, which must be submitted by April 1 of each year, may be in the form of a letter. We chose the April 1st deadline to allow the Secretary the necessary time to reallot the funds and to allow States the necessary time

to obligate such funds before the end of the obligation period.

We will reallot funds that States indicate are available for reallotment in proportion to each State's allotment, pursuant to § 98.61(b), for the applicable fiscal year, if the total amount available for reallotment is \$25,000 or more. If the total amount is less than \$25,000, we will not reallot these funds; instead, they will revert to the Federal government. We decided not to reallot funds if the total amount available for reallotment is less than \$25,000 because the amount of reallotment per State would be so small that it would do little to enhance a State's program. Moreover, it is administratively impractical for the Department to issue such awards. In addition, the Secretary will not award any reallotted funds to a State if its individual grant award is less than \$500, as it is administratively impractical to do so. No FY 1991 funds were available for reallotment.

If a State does not submit a reallotment report by the deadline for report submittal, we will determine that the Grantee does not have any funds available for purposes of the reallotment. If a State report is postmarked after April 1, we will not reallot the amount of funds reported to be available for reallotment; instead, they will revert to the Federal government. As previously discussed, late reports do not allow the Secretary the necessary time to reallot the funds nor do they allow the States the necessary time to obligate such funds before the end of the program period. By May 1, we anticipate the Secretary will reallot funds made available for reallotment.

Reallotted funds must meet the same programmatic and financial requirements as funds initially allotted to States; they must be obligated by the last day of the obligation period (see § 98.60 for discussion on obligating funds) and any unliquidated obligations must be expended by the last day of the program period.

In the interim final rules, we stated that the Secretary would determine which States needed the funds and how much they needed. In the final rule, we have revised the policy for distributing funds made available for reallotment. The funds will be distributed to States in proportion to their original allotment. (See discussion below.)

Comment: One commenter wanted to know how the Secretary will determine if States need any of the reallotted funds, on what basis the Secretary's decision will be made, and the recourse a State has if it disagrees with the Secretary's decision.

Response: As stated above, we have reconsidered our earlier policy. Under the final rule we will assume that all States need and want additional Block Grant funds that are made available for reallotment, and we will distribute the funds in the same proportion as the original allotments unless a State informs us that it does not want its share of the funds. If a State refuses its share or fails to obligate the funds before the end of the obligation period, the funds will be returned to the Federal government.

Comment: One commenter recommended that States, not the Secretary, should decide whether a State needs any of the reallotted funds.

Response: As discussed above, we have changed the regulation and now allow States to decide whether they need their share of reallotted funds.

Unlike allotments to State Grantees, once we make allotments to Territorial and Tribal Grantees, there is no reallotment of funds. While the Act provided for reallotment of funds for State Grantees, it made no such provisions for Territorial and Tribal allotments. Therefore, we have not provided for the reallotment of these funds.

Comment: One commenter suggested that Tribal and Territorial Grantees be eligible to receive reallotted State funds.

Response: Territories and Tribes are not eligible to receive reallotted State funds. The Act states that funds made available for reallotment are available for distribution to "States," and in section 658O where the reallotment provisions are discussed, "State" is defined as the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Thus, it is clear from the Act that Territories and Tribes are not eligible to receive funds made available for reallotment.

Financial Reporting (Section 98.64 of the Regulations)

Section 658J(c) of the Act, as amended by Pub. L. 102-27, provides that Block Grant funds awarded to State and Territorial Grantees must be obligated by the end of the fiscal year following the fiscal year in which they are awarded. Our regulations allow an additional year for liquidation of these obligations. In order to ensure that State and Territorial Grantees obligate and liquidate their Block Grant funds within the allowable timeframes, we require them to submit annual financial reports. The expenditure and obligation information included on these reports must be adequate to establish that the State or Territorial Grantee made its

expenditures and obligations in accordance with statutory and regulatory requirements, as well as the Grantee's Plan. State and Territorial Grantees should not submit documentation with their financial reports. Instead, they should retain the supporting documentation and, upon request, make it available to ACF.

Section 658O(c)(2)(C) of the Act provides that Tribal Grantees will submit such reports as the Secretary requires. We require Tribal Grantees to submit annual financial reports. Pursuant to § 98.60(e), Tribal Grantees have three fiscal years to expend their funds and are not required to obligate their funds by the end of the fiscal year following the fiscal year in which they are awarded. However, we still require Tribal Grantees to complete an annual financial report.

We believe that the financial reports are necessary both for the Department and for the Grantee to verify the financial status of Block Grant funds. They will also enhance the Department's ability to ensure the fiscal accountability of these funds. As Grantees must already have a financial management system for accounting and audit purposes, we do not believe that the requirement for these financial reports will be a significant burden on Grantees.

Within 90 days after the end of each fiscal year, State and Territorial Grantees shall submit a financial report to the Secretary on expenditures and unliquidated obligations. Within 90 days after the end of the liquidation period, they shall submit a final financial report to the Secretary showing final expenditures and the final balance of unliquidated obligations, if any. Expenditures and obligations reported must reflect the status of grant funds for the fiscal year for which funds were awarded. Unobligated funds as of the last day of the obligation period and unliquidated obligations as of the last day of the liquidation period will revert to the Federal government.

Within 90 days after the end of each fiscal year, Tribal Grantees shall submit a financial report to the Secretary on their expenditures and unliquidated obligations. As stated above, Tribal Grantees have three years in which to expend their grant. Thus, reporting unliquidated obligations is for informational purposes and will not result in any unobligated funds reverting to the Federal government (as it does with State and Territorial Grantees).

Within 90 days after the end of a program period, Tribal Grantees shall submit a financial report to the Secretary on final expenditures and the

balance of unexpended funds, if any. Expenditures reported by Tribal Grantees must reflect the status of grant funds for the program period that just ended. Unexpended funds will revert to the Federal government.

Unless Grantees or subgrantees receive program income, Grantees have the option of reporting their expenditures on either the long or short forms of the standard OMB Financial Status Report (i.e., Standard Form 269 or 269A). If Grantees or subgrantees receive program income, they must submit Standard Form 269.

An example of program income is provided in paragraph (c) of this section. The regulations at paragraph (d) provide methods for reporting funds returned to the Grantee or subgrantee.

Under paragraph (b) of this section, the Secretary may require these reports less frequently. For example, we did not require a financial report within 90 days of the end of FY 1991 for expenditures of the FY 1991 grant since such a report would cover less than two months of expenditures. Rather, for the FY 1991 grants, State and Territorial Grantees must submit financial reports within 90 days of the end of FY 1992, the end of the obligation period, and FY 1993, the end of the liquidation period. For FY 1991 grants, Tribal Grantees must also submit financial reports within 90 days of the end of FYs 1992 and 1993. All reports filed within 90 days of the end of FY 1993 are the final expenditure reports for FY 1991 grants. We will convey changes in the schedule of reporting in future guidance.

FY 1992 grants will not be issued until September 30, 1992. The first financial reports for FY 1992 grants for all Grantees are not required until 90 days after the end of FY 1993.

Comment: One commenter was concerned about how closely its expenditure report would have to match the budget which it included in its Application. The commenter wanted to know what would happen if, for example, of its 75 percent portion, it spent the limit on administrative and improvement activities, but did not spend all of the remainder on child care services so that some of the funds were returned to the Federal government. Would we, in that example, disallow costs on its administrative and quality and availability improvement activities?

Similarly, the commenter wanted to know if its expenditure under § 98.51 met its planned, budgeted expenditure and its expenditure under § 98.50 did not, would it face penalties because its expenditures under § 98.51 exceeded 25 percent of the expended portion of its allotment?

Response: As stated in the preamble to § 98.13, we will not hold Grantees to the budget estimates in their Applications. Furthermore, we will determine compliance with the 75/25 split and the limitation within the 75 percent portion based the Grantee's total allotment as explained below, not its total expenditures. A Grantee's actual expenditures will help us determine whether the Grantee is in compliance, but as long as the Grantee complies with the requirements of the Act and regulations in relation to their total allotment, the Grantee will not be subject to any penalty.

We will apply the program restrictions (e.g., the 75/25 split and the limit on administrative costs and quality and availability improvement activities) to the Grantee's total allotment to determine the appropriate levels of expenditure. For example, if a Grantee receives \$1,000,000, the Grantee may spend no more than \$112,500 on administration and quality and availability improvements under the 75 percent portion of the Block Grant (i.e., 15 percent of \$750,000). If a Grantee falls below this maximum, there is no problem. However, if a Grantee exceeds this maximum, then the Grantee is subject to possible sanction. Also, in all cases, if the Grantee expends less than the appropriate amount for direct child care services (in this case, \$637,500), the unexpended funds must be returned to the Federal government. Otherwise, the Grantee would exceed the limit on administrative costs and quality and availability improvement activities.

Comment: One commenter recommended that we require Grantee reports of expenditures to be broken out between program and administrative costs.

Response: Under § 98.71, we require that Grantees report their program and administrative expenditures in their annual report; we do not believe that it is necessary to require the same information in the financial report.

Audits (Section 98.65 of the Regulations)

Section 658K(b)(1) of the Act provides that State and Territorial Grantees must have an audit conducted after the close of the program period. Section 658K(b)(2) of the Act provides that Grantee audits shall be conducted by an entity that is independent of any agency administering activities that receive Block Grant funds and in accordance with generally accepted auditing principles. In order to meet this requirement, Grantees must conduct audits in accordance with the provisions of OMB Circular A-128 (Audits of State

and Local Governments), as required in paragraph (a) of this section.

Since the program period for the Block Grant is three fiscal years, during the first few years of program implementation it is likely that an A-128 audit will include the Block Grant program before the end of a Block Grant program period. This is permissible. However, for purposes of the Block Grant, we require Grantees to conduct an audit only after the close of the program period.

Audits should cover expenditures made during the program period. In other words, expenditures made during the program period should be audited. It does not mean the audit must be conducted on the Federal fiscal year. Audits may be conducted on the Grantee's fiscal year.

The Act does not specify Tribal audit requirements, but provides in section 658O(c)(2)(C) that the Secretary may require Tribal Grantees to conduct audits of their programs. Therefore, similar to State and Territorial Grantees, we require Tribal Grantees to conduct an audit in accordance with OMB Circular A-128 after the close of the program period.

We also require Grantees to ensure that subgrantees meet the appropriate audit requirements. The appropriate audits for subgrantees that are local governments are the audit requirements of OMB Circular A-128. The appropriate audit requirements for non-profit institutions and institutions of higher education are those of OMB Circular A-133.

Funds awarded under procurement contracts, such as to a child care center for the provision of child care services, are not subject to these requirements. They are, however, subject to the terms and conditions of the contract.

Section 658K(b)(3) of the Act provide that Grantees must submit a copy of the audit report to the legislature of the State or Territory and to the HHS Inspector General for Audit Services not later than 30 days after its completion. Grantees located in Regions I through VIII should submit audit reports to the HHS Office of the Inspector General, Office of Audit Services in Kansas City, MO. Grantees located in Regions IX and X should submit audit reports to the HHS Regional Inspector General for Audit Services in Sacramento, CA.

Pursuant to section 658K(b)(4) of the Act, Grantees must repay to the Federal government any amounts determined through an audit not to have been expended in accordance with the statutory and regulatory provisions of the program, or with the Plan, and which are subsequently disallowed by the

Department, or the Secretary will offset such amounts against Block Grant funds to which the Grantee is or may be entitled.

We require that Tribal Grantees also adhere to these audit provisions. They should submit a copy of the audit report to: (1) Their Tribal Council(s); (2) The HHS Office of the Inspector General, Office of Audit Services in Kansas City, MO or, if the Tribal Grantee is located in Regions IX or X, to the Regional Inspector General for Audit Services in Sacramento, CA; and

(3) The head of the cognizant agency, if different than HHS.

Grantees must provide Federal agencies access to appropriate books, documents, papers, and records. These records must adequately identify the application of Block Grant funds.

Grantees should be aware that additional Federal audits and reviews may be conducted. However, these audits or reviews will build upon work performed under prior audits, if such audits meet applicable standards. See subpart J for additional information on monitoring and compliance reviews.

If a Grantee fails to submit an audit report within the timeframe specified in paragraph (c) of this section, the Secretary may determine the Grantee has failed to comply with the regulations. The Secretary will notify the Grantee of such a determination, and the non-compliance procedures described in § 98.91 will be followed.

Comment: One commenter asked that we clarify the regulation at § 98.65(a) by changing it to read "[e]ach Grantee must have an audit conducted after the close of each fiscal year grant program period in accordance with OMB Circular A-128."

Response: We do not agree that adding the phrase "fiscal year grant" makes the regulation clearer. If anything, the suggested language would make the regulation more confusing because it introduces a new term that we do not use anywhere else in the regulation. In the definition of "program period" at § 98.2(cc), we clearly state that a program period is the time period during which a fiscal year's grant must be obligated and liquidated; adding the suggested language would be redundant. For the Block Grant program, the program period is, at a maximum, a two-year obligation period plus a one-year liquidation period.

It is possible that the commenter wanted us to clarify that the audits could be conducted on the Grantee's fiscal year, not the Federal fiscal year implied by the reference to the program period. We did not intend to imply that audits must be conducted on the Federal

fiscal year. The regulation at § 98.65(a) simply means the audit for a given Federal fiscal year's funds must be conducted after the close of that fiscal year's program period, not that the audit must cover the exact same time period as the program period. As stated earlier, audits may be conducted on a Grantee's fiscal year.

Comment: A few commenters pointed out that, in the interim final rule at § 98.65(a), we stated that OMB Circular A-128 applied, but then in the preamble indicated that the Block Grant is a major Federal assistance program for all Grantees. Since most Tribal grants are less than \$300,000, the threshold for major Federal programs as defined in OMB Circular A-128, the statements were inconsistent. Therefore, the commenters asked for clarification of which of these two statements apply to Tribal Grantees.

Response: We did not intend to rewrite the definition in OMB Circular A-128 for a major program, and we have deleted that statement in the preamble. Tribal Grantees that receive grants that are less than the threshold for a major Federal program (\$300,000 or 3 percent of their total Federal assistance expenditures, whichever is larger) should conduct their audits as required under OMB Circular A-128 for a non-major program. We do not require such Grantees to conduct the audit as if the Block Grant were a major program.

Disallowance Procedures (Section 98.66 of the Regulations)

We have added a general statement in the final rule that Block Grant expenditures must be made in accordance with the Act, the implementing regulations, and the Grantee's approved Plan, or the expenditures will be subject to disallowance. This statement does not represent a change in policy but rather an explicit statement of a policy that was implied in the interim final rule.

The Agency may take a disallowance action against a Grantee as the result of an audit or a review which finds that the Grantee has improperly spent Block Grant funds. The Agency will notify the Grantee of its decision to disallow expenditures in writing.

If the Grantee agrees with the decision that the funds were not expended in accordance with the Act, these regulations, or its Plan, the Grantee shall repay any amounts improperly expended.

If the Grantee disagrees with a disallowance decision, the Grantee may appeal the decision. However, the Grantee may not appeal the

determination of award amounts or the disposition of unexpended balances.

The Grantee may request a reconsideration of a decision to disallow by appealing to the Assistant Secretary. The appeal letter must be postmarked no later than 30 days after the receipt of the disallowance notice and must be accompanied by the notice and the Grantee's reasons for believing that the disallowance was incorrect.

The Grantee may also appeal a disallowance decision directly to the Departmental Appeals Board. We specify the contents of the appeal and other instructions in 45 CFR part 16.

If the Grantee has appealed a decision to the Assistant Secretary, and the decision is not in the Grantee's favor, the Grantee may then appeal the decision of the Assistant Secretary to the Departmental Appeals Board.

The Grantee's repayment of the disallowed funds must follow a final decision to disallow. If the Grantee refuses to repay the funds, the amount of the disallowance will be withheld from future grants.

We will charge interest on disallowed expenditures of the Block Grant program in accordance with 45 CFR part 30. Interest will begin to accrue from the date of notification of disallowance to the Grantee.

There were no comments on this section of the rule.

Fiscal Requirements (Section 98.67 of the Regulations)

In the interim final rule, this section of the regulations addressed the fiscal requirements for contracts and agreements with the use of Block Grant funds and provided that a Grantee was required to have accounting procedures that adequately established the propriety of grant expenditures. The preamble included the requirement that expenditures of Block Grant funds are subject to the same laws and procedures as expenditures of the Grantee's own funds, but this provision was omitted from the regulation. This requirement has been added to the regulation at § 98.67(a). The section has been retitled "Fiscal Requirements."

The Act does not directly discuss general fiscal requirements and contracting authority or limitations, but we believe these regulatory provisions are consistent with the intent of the Act. We specify that Block Grant funds are subject to the same laws and procedures as expenditures of the Grantee's own funds. This applies for expenditures incurred by the Grantee and for contracts involving the use of grant funds. Contracts entered into by the lead agency or other State agencies

administering the program would be subject to State procurement rules and procedures; contracts entered into by local agencies who serve as subgrantees would be subject to applicable local rules and procedures. In addition, Grantees may impose additional procurement requirements on subgrantees. We also require that fiscal and accounting procedures be adequate for reporting purposes and to establish the propriety of grant expenditures.

There were no comments on this section of the rule.

Subpart H—Program Reporting Requirements

Annual Report Requirement (Section 98.70 of the Regulations)

Section 658K(a) of the Act requires each State receiving Block Grant funds to submit an annual report to the Secretary in the manner specified by the Secretary. The first report must be submitted by December 31, 1992.

We added the statement "in the manner specified by the Secretary" in the final rule in order to allow the systematic collection of data. Such a systematic collection is necessary in order for the Secretary to fulfill the requirement at section 658L of the Act. Section 658L requires the Secretary to summarize annually for Congress the data and information required at section 658K of the Act and § 98.71 of the regulation.

While the Act does not designate the reporting period, we have chosen to have the reporting period coincide with the program period, which is defined at § 98.2(cc) as the period during which the designated fiscal year's Block Grant funds must be expended. The first program period—for FY 1991 funds—does not end until September 30, 1993. The report for that period will be due December 31, 1993. Therefore, the report due on December 31, 1992, will be an interim report (covering the expenditures through the end of FY 1992 for activities undertaken with FY 1991 dollars (i.e., from November 5, 1990 through September 30, 1992)). Subsequent reports (i.e., reports in 1994 and thereafter) will cover Block Grant activities during the program period for each successive fiscal year's funding.

Although Grantees may expend funds from two or three different fiscal year allotments in the course of a year, annual reports will cover expenditures from a single year's allotment. This policy is similar to the policy for financial reports discussed in § 98.64 and is necessary to ensure that Grantees meet the requirements of the Act regarding the use of funds.

Section 658O(c)(2)(C) of the Act specifies that Tribes will report on programs and activities under the Block Grant. Based on this provision and because Tribes are subject to requirements for a Plan and necessary assurances, we also require Tribal Grantees to submit an annual report.

As with other provisions, the Territories are considered States for this purpose.

There were no comments on this section of the rule.

Content of Report (Section 98.71 of the Regulations)

Consistent with the requirements of section 658K of the Act, we require States to submit specific information in their annual report to the Secretary. Furthermore, as discussed in § 98.70, we are requiring the same information from Territories and Indian Tribes.

A Grantee's report to the Secretary must include: uses for which the program period's Block Grant funds were expended during that program period and the amount expended for such uses; the extent to which affordability and availability of child care increased; results of the review of licensing and regulatory requirements and policies pursuant to § 98.41(d); an explanation of any reduction in standards pursuant to § 98.41(c); a description of standards in the area served by the Grantee; and a description of any Grantee actions to improve quality. For the purpose of this report, the term "standards" refers to the State and local licensing and regulatory requirements described in §§ 98.40(a) and 98.2(x). Since we may need other information in order for the Secretary to fulfill his responsibilities under sections 658I and 658L of the Act, paragraph (g) of this section allows the Secretary to establish additional reporting requirements.

To the extent data is reasonably available to the Grantee from any source, the Grantee must also report: The number of children assisted with Block Grant funds; the number of children assisted under other Federal child care and pre-school programs; the type and number of child care programs, child care providers, caregivers, and support personnel in the area served by the Grantee; salaries and other compensation for full-time and part-time child care staff; and activities to encourage public and private partnerships. Available data sources, in addition to the Grantee's records, may include reporting from child care programs authorized under titles IV-A and XX of the Social Security Act, Head

Start, and Department of Education child care services. We also encourage Grantees to use data available from studies conducted within their jurisdictions using established methodologies, even if the Grantee did not fund the studies.

In the interim final rule, we required Grantees to specify the uses for which Block Grant funds were expended and the amount expended for such uses in relation to the budget submitted each year with their Application for Block Grant funds. We have deleted this requirement in the final rule to be consistent with changes made to the Application requirement in § 98.13. Section 98.13 now allows Applications to be submitted annually, or less frequently as specified by the Secretary.

We will send more information to Grantees concerning specific reporting requirements. We will issue more detailed instructions in the future, including data definitions and reporting format. Before we issue such instructions, however, we would solicit comments and secure necessary OMB approval. Among other issues, we are considering the issue of compatibility with reporting requirements for the other child care programs administered by ACF.

Comments: Several commenters urged development of comparable reporting requirements and common data definitions across ACF child care programs.

Response: To the extent possible, we will coordinate Block Grant reporting requirements with other ACF programs. As we develop data definitions and a reporting format, we will solicit the advice and assistance of Grantees.

Comment: One commenter expressed concern about the lack of information systems among Grantees to meet the reporting requirements for all ACF child care programs.

Response: We are aware of the importance of information systems to child care reporting, as well as child care program operations. Our Office of Information Systems Management will soon issue guidance on developing automated child care information systems.

Comment: Another commenter suggested a separate reporting requirement regarding the status of certificate program implementation.

Response: This is a program requirement and will be addressed through monitoring, as described in the preamble section entitled "Monitoring" below.

Subpart I—Indian Tribes

General Procedures and Requirements (Section 98.80 of the Regulations)

Section 658O(c)(1) of the Act provides that the Secretary may make grants to or enter into contracts with Indian Tribes for the planning and execution of Block Grant programs. Section 658P(7) of the Act defines eligible Indian Tribes according to the definition provided in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)). The term Indian Tribe includes Alaska Native Villages or regional or Village corporations pursuant to the Alaska Native Claims Settlement Act (42 U.S.C. 1601–1641). Section 658P(14) of the Act defines eligible Tribal organizations according to the definition provided in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)). The regulation at § 98.2(o) explicitly includes consortia, as noted in the discussion at § 98.2 of the preamble. In other words, eligible Tribal Grantees must be Federally-recognized Indian Tribes or must be groups of Federally-recognized Indian Tribes. Readers should note that we corrected the statutory citations from those given in the Act based on amendments in 1988 to the Indian Self-Determination and Education Assistance Act by section 103 of Public Law 100–472.

With limited exceptions, the interim final rule required all Tribal Grantees to comply with all regulations under parts 98 and 99. As discussed in § 98.83, we have provided most Tribal Grantees with additional flexibility in the final rule. However, the final rule provides that all Tribal Grantees are subject to all the regulations under parts 98 and 99, unless otherwise expressly indicated in this subpart.

The regulations in this section also provide that an Indian Tribe or a consortium applying for or receiving Block Grant funds must have at least 50 children under age 13. The regulations also provide that we may base this determination on an alternate but similar age limit based on the availability of data.

For purposes of determining whether a Tribe has 50 or more children, we will include children who live on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

Comment: We received a few comments which objected to the requirement that Tribes have at least 50 children to be individually eligible to apply for the program.

Response: For the reasons discussed in the preamble to § 98.62, we believe a minimum of 50 children is a reasonable requirement. Tribes must be able to demonstrate their ability to administer a Block Grant program; a Tribe must be of some minimum size in order to have all the components that are necessary to operate a program. In other Federal programs, such as grants to Tribes for supportive and nutrition services to older Indians (part of the Older Americans Act of 1965), a 50-person minimum is used, as specified by Congress.

Comment: One commenter requested a waiver of the minimum 50-child requirement for Tribal eligibility due to geographic disparity between members of the consortium through which the commenting Tribe applied for Block Grant funds.

Response: We understand that the very nature of any minimum population requirement will potentially preclude some Tribes from operating a Block Grant program without joining a consortium. However, we believe a minimum population is necessary and have set the threshold number for Tribal Block Grant programs at 50 children. We believe that the legitimacy of this requirement is underscored by the few comments we received on this issue and the fact that over 160 Tribal Grantees applied to operate a Block Grant program.

Section 658O(c)(3)(B) of the Act requires that, in determining whether to approve an Application from a Tribe, the Secretary must consider its ability to carry out its proposed programs satisfactorily. We include this requirement in paragraph (b)(2) of this section. A Tribal applicant must include information to demonstrate its capability to carry out a program, pursuant to § 98.13(c).

Additionally, we have provided that Tribes may enter into consortium arrangements in order to operate a Block Grant program. We believe that this provision will allow Tribes to take advantage of economies of scale and other benefits associated with larger programs. Moreover, it will allow those Tribes with fewer than 50 children under age 13 to participate in the program.

Paragraph (c)(4) of this section requires that consortia demonstrate sufficient managerial, technical, and administrative ability to administer government funds properly, manage a Block Grant program, and comply with the provisions of the Act and the regulations. Similarly, an Application from a consortium must include

information to demonstrate management ability and the appropriate authorization, pursuant to § 98.13(c) and paragraph (c)(1) of this section.

Comment: Although we did not receive any formal comments regarding the requirement that consortia and Alaska Native Corporations obtain and submit resolutions from each participating Tribe, we did receive comments from consortia and Native Corporations during our Application and Plan review process. Several commenters, especially the Alaska Native Corporations for whom distance and travel are particular problems, protested our requirement for a resolution from each participating Tribe. Many of the comments noted that the Alaska Native Corporations are individually eligible to apply for Block Grant funds on behalf of their constituent Villages.

Response: Our rationale for requiring a resolution was our desire for verification that each individual Tribe or Village in a consortium had actually agreed to give the consortium the authority to apply for Block Grant funds on their behalf. In the final rule, we have decided that we will not require a formal resolution from each Tribe or Village, but we will require the lead agency of a consortium to "demonstrate" that all Tribes or Villages agree to participate in the consortium arrangement for the purpose of applying for and receiving Block Grant funds.

Consortia could demonstrate members' agreement to participate in a number of ways. Obviously, a resolution would be acceptable. We would also accept an agreement signed by the Tribal Leader or evidence that a Tribal Leader participated in a vote adopting such an agreement. We would not accept a vote on behalf of an unrepresented Tribe or Village, however.

In the special case of Alaska Native Corporations, which are individually eligible to apply on behalf of their constituent Villages, the Corporation would need to demonstrate agreement from member Villages in order to receive the base amount associated with each constituent Village. In the absence of such demonstration of agreement from a constituent Village (and assuming the Village did not apply to operate its own Block Grant program), the Corporation would only receive the per-child amount associated with that Village.

We wish to emphasize that we require services to be available for each Tribe for which a consortium receives funds (or, in the special case of Alaska Native Corporations described above, for each

Village for which the consortium receives both the base and per-child amounts). By "available services," we mean services must be offered to parents in each participating Tribe or Village. It is not permissible to apply for funds on behalf of a Tribe or Village and not make services available in that Tribe's service area.

We also require that all participating consortium members be geographically proximate to one another, although we have provided an exception for those consortia with pre-existing arrangements. By requiring proximity, we have attempted to ensure that consortia form to best serve the needs of Tribal members. We specifically permit consortia to operate in more than one State. We will assess geographic proximity on a case-by-case basis.

Pursuant to section 658O(c)(5) of the Act, the awarding of a grant to a Tribal Grantee shall not affect the eligibility of any Indian child to receive Block Grant services provided by a State Grantee. For non-Tribal Block Grant programs, Indian children are subject to the same eligibility requirements, detailed in §§ 98.20 and 98.21, as all other children. We have decided to give Tribal Grantees the option to require that Indian children must be from a family whose income does not exceed either: (1) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee; or, alternatively, (2) 75 percent of the appropriate State median income. A Tribe must signify which option it has chosen in its Plan. We determined that Tribal Grantees should have this option in order to permit the flexibility to coordinate with State programs and to prevent Tribal children from being disadvantaged.

We considered exempting Tribal Grantees from this income requirement entirely, but we realized that such an exemption entailed the possibility of making a child eligible for a Tribal program when that same child would be ineligible for the State program. Aside from creating confusion, this discrepancy could also allow Tribes to ignore the program's purpose of serving low-income children and thus deprive children of Block Grant services.

Ultimately, we decided to give Tribal Grantees the option described above. We believe that this option provides Tribal Grantees with additional latitude to concentrate Block Grant services. We also believe that this option is consistent with the statutory provision for dual eligibility.

Application and Plan (Section 98.81 of the Regulations)

Indian Tribes are required to submit an Application and a Plan in accordance with requirements at §§ 98.13 and 98.16. Additionally, section 658O(c)(2) of the Act requires that Indian Tribes submit an Application which provides that: (1) The applicant will coordinate, to the maximum extent feasible, with the lead agency(ies) in the State(s) in which the applicant will carry out the Block Grant program; and (2) Tribal Block Grant programs and activities will be carried out on the Indian reservation (except for programs located in Alaska, California, or Oklahoma) and for the benefit of Indian children.

As discussed in § 98.20, the requirement that Tribal Grantees operate their programs on the Indian reservation for the benefit of Indian children establishes the authority of the Tribal Grantee to serve only Indian children.

Comment: One commenter proposed that we change §§ 98.81(a)(2) and 98.83(b) to include the language "on or near an Indian reservation." This change would accommodate Tribes wishing to offer services to parents commuting to work or school off the reservation.

Response: Tribal Grantees have the flexibility to define services and activities for the purposes of these provisions. For example, "activities" could be defined as only including administrative activities, such as issuing a child care certificate, or it could be defined to include both administrative activities and child care services. Thus, while some services/activities must be conducted on the reservation, all services and activities need not be. Similarly, Tribes must decide whom they will serve. Tribal Grantees have flexibility to define reservation to include the geographic boundaries of the reservation only, on or near the reservation, or some other definition, depending on Tribal needs and circumstances. Thus, Grantees may serve only families residing on the reservation, or may serve those who reside on or near the reservation. We realize the diversity and unique circumstances of Tribal Grantees and wish to allow maximum flexibility to design programs to meet Tribal needs.

We require Tribal Grantees to submit their initial Plan for a period of two years. Section 658O(c)(4) of the Act permits the Secretary to authorize Tribal grants for periods of up to three years; section 658E(b)(1) requires that the initial Plan from States be for a period of

three years. We determined, however, that because most Tribal programs will be relatively small, requiring Plans every two years will not be overly burdensome. In addition, ACF will be able to review Tribal Plans on a more timely basis since, after 1991, they will not generally be processed at the same time as Plans from States. As specified in § 98.13(b), all Grantees, including Tribal Grantees, must apply for Block Grant funds annually (or less frequently if specified by the Secretary).

Coordination (Section 98.82 of the Regulations)

Section 658O(c)(2)(A) of the Act requires Tribal applicants to coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out the Block Grant program. We cover this requirement in paragraph (a) of this section.

We require Tribal applicants to comply with the provision at section 658D(b)(1)(D) of the Act (and § 98.12 of the regulations), regarding coordination with other Federal, State and local child care and development programs. We included language requiring coordination with other Tribal programs, as well. We also require States to coordinate with Tribes at § 98.12(c).

Since Tribes must submit Applications annually (or less frequently as specified by the Secretary), we expect the coordination specified in this section to be carried out on an ongoing, rather than one-time, basis.

There were no comments on this section of the rule.

Requirements for Tribal Programs (Section 98.83 of the Regulations)

As stated in the preamble at § 98.80, Tribal Grantees are subject to all the regulatory requirements of parts 98 and 99, unless otherwise indicated. This section of the regulation includes requirements for Tribal programs.

The Act is generally silent regarding which provisions should be applied to Tribal Grantees. In the interim final rule, we required all Tribal Grantees to meet the same requirements that all other Grantees must meet. Based on recommendations that we received, both through the comment process and our experience reviewing Tribal Plans, we have exempted most Tribal Grantees from a number of the Block Grant requirements. The final rule does not require Tribes with grants less than a figure set by the Secretary based on the smallest amount which could be allotted to a State or Territorial Grantee (set at

\$225,000 currently) to: (1) set aside 25 percent of Block Grant funds for quality improvements, early childhood development, or before- and after-school programs; or (2) establish certificate programs.

All Tribal Grantees must nevertheless expend a minimum of 63.75 percent of their per-child amount on direct child care services. We established this amount based on the service percentage that applies to other Grantees. Non-Tribal Grantees must spend 85 percent of 75 percent of their total Block Grant on child care services

($0.85 \times 0.75 = 0.6375$, or 63.75 percent). Consistent with this, we require Tribal Grantees to expend at least 63.75 percent of their per-child allocation on child care services. The remaining 36.25 percent may be used for child care services, early childhood development, before- and after-school care, or other activities required to implement the Block Grant program, including administration. Such services, activities, and costs must be consistent with the purposes and requirements of the Block Grant. For example, Tribal Grantees may not use Block Grant funds to extend or replace the regular academic program.

For Tribal Grantees, this percentage only applies to the per-child portion of their total allocation, pursuant to § 98.83(e). As described in the interim final rule, the purpose of a base amount for each Tribal Grantee is to provide flexibility to cover the administrative costs of implementing a child care program. Thus, these base funds are available for any activity consistent with the purposes and requirements of the Block Grant program. This flexibility has been clarified in paragraph (e) of this section of the regulation.

We decided to set the cut-off for not meeting all State and Territorial Block Grant requirements at an amount which approximates that least amount which could be allotted to any State or Territory, which is currently \$225,000. As the Act requires States and Territories to meet all requirements with a grant of that size, we require Tribal Grantees to do so also. In addition, this amount is sufficient to ensure that the individual subdivisions of the amount as required by the Act (e.g., five percent of the total Block Grant for quality activities pursuant to § 98.51) will be of a sufficient magnitude.

In looking at whether Tribal Grantees should be subject to all requirements to which States are subject, we also considered other options. We considered keeping the requirement of the interim final rule that all Grantees meet all requirements. However, based

on the relative size of most of the Tribal Grants (for FY 1991 more than 45 percent are under \$50,000 and more than 70 percent are under \$100,000) and our experience in reviewing Tribal Plans, we believe the set-aside requirements at §§ 98.50 and 98.51 are impracticable. We also believe that the unique characteristics of many reservations and Tribal service areas and the small amounts of the Tribal Grants make requiring a certificate program, which requires substantial administrative cost, impracticable.

We also considered exempting all Tribal Grantees from the provisions specified above. We did not choose this option because some Tribal Grantees have very large allotments, in some cases even larger than State allotments. We therefore determined that such a blanket exclusion would be inappropriate, and that Tribal Grantees with allotments equal to or greater than the smallest potential Territorial or State allotment should meet the same requirements that States and Territories must meet.

Finally, we considered basing the cut-off amount only on the per-child allocation of a Tribal Grantee, or at amounts other than \$225,000. We decided against either option because it seems logical to require those Tribal Grantees with total funds equal to the smallest potential State or Territorial grant to meet all the requirements that all State and Territorial Grantees must meet. We also believe that those consortia with large percentages of their allotment from aggregated base amounts have sufficient flexibility and resources to operate a full program.

Tribal Grantees, like States, must designate a lead agency to administer the Block Grant program. As with States, we feel that it is important to have a single point of contact for Tribal Block Grant programs.

Section 658O(c)(2)(B) of the Act requires that, except for Grantees located in Alaska, California, or Oklahoma, Block Grant programs must be carried out on the Indian reservation for the benefit of Indian children.

We anticipate that, in the case of consortia, licensing and regulatory requirements will vary from Tribe to Tribe. This variation is not unlike situations in States, where licensing and regulatory requirements vary from county to county and city to city. In cases where licensing and regulatory requirements do vary among consortium members, we considered requiring the consortium to accept and apply a single set of licensing and regulatory requirements within the consortium. We

decided, however, to simply require the consortium to specify in written agreements variations in the application of licensing and regulatory requirements. For example, a consortium having Tribal members with different licensing and regulatory requirements must have in place written agreements between the consortium and each member specifying the licensing and regulatory requirements that apply for each consortium member.

Tribal Grantees that are consortia, like State Grantees, must ensure that providers meet the applicable licensing, regulatory, and health and safety requirements of each jurisdiction within which the consortium operates a Block Grant program. Thus, child care provided through the Block Grant program must meet applicable State or Tribal standards. In the absence of Tribal standards, State standards will apply unless Tribes are excepted under State law. If Tribes are excepted from State health and safety requirements for the purposes of providing child care, Tribal Grantees must develop requirements pursuant to § 98.41.

Similarly, if there are variations in the implementation of the requirements of the Act or these regulations, the variations must be specified in the written agreements.

Comment: Most of the Tribal commenters requested greater flexibility for Tribal Grantees. Many of these comments cited the limited availability of most Tribal programs, due both to the relatively modest size of most Tribal allotments and the distinctive nature of child care on or near reservations. Some comments suggested that Tribal Grantees should be exempt from the assurance at § 98.15(b)—the requirement to always have child care certificates as an option for parents offered Block Grant services. Other comments suggested that Tribes needed greater flexibility regarding spending on non-service activities, such as quality and availability activities and administration.

Response: As discussed above, based upon Application and Plan reviews and discussions with various Tribal Leaders, we have decided to exempt most Tribal Grantees from certain regulatory requirements. Section 98.83(f) of the regulation states that Tribal Grantees with total allotments less than such sum as set by the Secretary that approximates the least amount which could be allotted to any individual State or Territory (currently \$225,000), are exempt from the assurance at § 98.15(b), the requirements at § 98.30 regarding certificates and the requirements for reserving funds at §§ 98.50 and 98.51.

Tribes with allotments greater than \$225,000 (or such other amount as set by the Secretary), remain subject to those sections of the regulation. Section 98.83(g) of the regulation requires that Tribal Grantees exempt from the requirements at §§ 98.50 and 98.51 must spend at least 63.75 percent of their per-child amount on services while the remaining 36.25 percent plus the base amount may be spent on child care services or on activities to improve the availability and quality of child care and all other non-service expenditures.

Comment: Although we received no written comments from Tribes on the requirement in § 98.44 that Grantees prioritize services to families with very low family income and children with special needs, we did receive several verbal comments during our Plan review process. These commenters were specifically concerned with the prioritization of families with very low family income, indicating that such a distinction on reservations where incomes are typically very low is difficult to make and often inappropriate. Similarly, we have received comments regarding the requirements at § 98.51(c)(2), which require Grantees to prioritize funds to geographic areas eligible to receive grants under Section 1006 of the Elementary and Secondary Education Act of 1965 and then to any other areas with concentrations of poverty and areas with very high or very low population densities. These commenters stated that Tribal service areas are generally homogenous in income and population density.

Response: Based on these comments, we have eliminated the requirement that Tribal Grantees prioritize services to families with very low family income. We have also eliminated the requirement that Tribal Grantees prioritize funds granted or contracted under § 98.51 to geographic areas eligible to receive grants under Section 1006 of the Elementary and Secondary Education Act of 1965 and then to any other areas with concentrations of poverty and areas with very high or very low population densities. Tribal Grantees continue to be subject to the prioritization requirements in § 98.44(b) regarding special needs children.

Comment: We received one written comment and several verbal comments regarding the applicability of sliding fee scales to Tribal programs. One commenter requested flexibility in establishing sliding fee scales, including setting one minimum fee for everyone regardless of income.

Response: The requirement for establishing sliding fee scales continues

to apply to Tribes. We wish to emphasize, however, that Grantees have considerable flexibility in setting the fee schedules. Tribes wishing to set low fees with little variation between income levels have the flexibility to do so pursuant to § 98.42.

Comment: One commenter proposed that we change §§ 98.81(a)(2) and 98.83(b) to include the language "on or near an Indian reservation." This change would accommodate Tribes wishing to offer services to parents commuting to work or school off the reservation.

Response: As discussed at § 98.81, Tribal Grantees have the flexibility to define reservation to include those areas which are "on or near." Therefore, it is not necessary to change the regulatory language.

Subpart J—Monitoring, Non-compliance and Complaints

Monitoring (Section 98.90 of the Regulations)

Section 658I(b)(1) of the Act requires the Secretary to monitor programs funded under the Block Grant for compliance with the provisions of the Block Grant Plan, as well as the provisions of the Act. We have added language at paragraph (a)(2) of this section which makes it clear that Grantees are also required to comply with the requirements of these regulations. In addition, we have included language at § 98.90(b) which provides for monitoring entities providing services under contract or agreement with the Grantee. We included this language to ensure that all services follow the provisions of the Plan and the Act, regardless of how the services are provided. We will provide additional information regarding the nature and extent of monitoring activities in the future.

If a review or investigation uncovers evidence that a Grantee has failed to comply substantially with the Plan or with one or more of the provisions of the Act or implementing regulations, we will notify the Grantee. We will then give the Grantee 60 days to provide additional information before we make a formal determination of failure to comply.

We have also included language in paragraph (c) of this section which requires that Grantees make available appropriate books, documents, papers, manuals, instructions, and records, upon reasonable request, when the Department is monitoring a Grantee program.

Paragraph (d) of this section requires Grantees and subgrantees to retain

records as described in paragraph (c) of this section. These records are necessary to support the accuracy of the information reported on the Financial Status Report (Standard Form 269 or 269A) and in the annual report, to permit audits and to establish the Grantee's compliance with the Block Grant requirements. Grantees and subgrantees are also required to have their contractors retain and permit access to records which are directly pertinent to that specific contract. Grantees and subgrantees may accomplish this by writing such provisions into all their contracts.

Paragraph (e) of this section requires Grantees to retain their records for three years from the day they submit their final Financial Status Report (Standard Form 269 or 269A) at the end of the program period. If an issue arises before the expiration of the period, records must be retained until the issue is resolved or the end of the three year period, whichever is later.

Information which leads us to believe that there may be a failure to comply may come from monitoring activities, from the annual reports required under § 98.70, from complaints received and processed under § 98.93, or from any other source.

There were no comments on this section of the rule.

Non-Compliance (Section 98.91 of the Regulations)

After providing the notice described in § 98.90(b), we will determine whether the evidence supports a finding of a failure to comply substantially with the Block Grant Plan, the Act or implementing regulations. We will provide the Grantee a written decision regarding non-compliance within 60 days of the preliminary notification described in § 98.90(b), or within 60 days of the receipt of additional comments from the Grantee, whichever is later.

The final notice of non-compliance will include any penalties and/or sanctions to be imposed, pursuant to § 98.92. We will give the Grantee the opportunity for a hearing under part 99. Issues at the hearing will include the finding of non-compliance, as well as the penalties and/or sanctions to be applied.

There were no comments on this section of the rule.

Penalties and Sanctions (Section 98.92 of the Regulations)

Section 658I(b)(2) of the Act provides specific penalties and sanctions to be applied if it is determined that the Grantee has failed to comply

substantially with any provision of the Block Grant Plan, the Act or implementing regulations. We include these penalties in the regulation at paragraphs (a) and (c) of this section.

The penalty may be the cessation of all payments under the Block Grant, or, in the case of non-compliance in the operation of a specific program or activity, we may make no further payments to the Grantee with respect to that program or activity. For example, if we determine that a Grantee has not implemented a certificate program by October 1, 1992, as required in section 658E(c)(A)(iii) of the Act, we could terminate all funding under 658E(c)(3)(B). Penalties will continue until we are satisfied that there is no longer any such failure to comply or that the Grantee will promptly correct the non-compliance.

In addition to imposing the penalties described above, the Act provides that the Secretary may impose other appropriate sanctions, including recoupment of funds improperly expended for purposes prohibited or not authorized by the Act. The Secretary may also disqualify the Grantee from receipt of any further funding under the Block Grant.

We may informally contact the Grantee for more information regarding potential non-compliance in an effort to resolve the issue without invoking the formal process. In addition, the issue may be resolved at any point in the process through the introduction of new information that resolves the question, or through the Grantee's agreement to come into compliance with the Plan and/or the Act. Nevertheless, we may apply penalties and/or sanctions, even if the issue is resolved informally. We include these provisions in paragraph (e) of this section.

Comment: One commenter suggested adding language to § 98.92 which clearly states that, except in cases of provider or parent fraud, providers and parents are not responsible for repayment of child care assistance.

Response: At § 98.60, we have clarified our policy regarding child care payments which are the result of fraud and those that are made in error.

Comment: One commenter suggested that the regulations, either at § 98.30 or § 98.92, should provide that, upon a finding that a procedure or requirement violates the parental choice requirements of § 98.30, the State shall be provided a reasonable period of time to cease the impermissible practice and enter into compliance. The State should not have fiscal sanctions or other penalties imposed unless the State refuses to cease the impermissible

practice after a decision by the Assistant Secretary under § 99.3 that the State has violated the parental choice requirements.

Response: The regulatory language at §§ 98.91 and 98.92 is applicable to all program activities and provisions of the Act. As discussed more fully in § 98.30, if we find a Grantee's procedure or requirements to have the effect of severely limiting parental choice, we will give the Grantee a reasonable amount of time to make changes. If the Grantee refuses to change the procedures or requirements, we would initiate a compliance action.

Complaints (Section 98.93 of the Regulations)

Section 658I(b)(3) of the Act requires the Secretary to establish rules for processing complaints concerning any failure to comply with the Act or the Plan. We provide such procedures in this section of the regulations.

This section addresses complaints that a Grantee has failed to comply with the terms of the Act, implementing regulations, or the Plan. We add that the Secretary is not required to consider a complaint unless it is submitted as required by this section. Paragraph (b) of this section includes the address of the Assistant Secretary and requires that the complainant identify the basis for the complaint and provide all relevant information known to the person submitting it.

We will furnish a copy of any complaint to the affected Grantee. We will consider any comments received from the Grantee within 60 days (or a longer period if agreed to by the Grantee and the Department) in responding to the complainant.

We will provide a written response to complaints within 180 days after receipt. If we do not resolve the issue with the Grantee, we will pursue the complaint through the process described in § 98.90.

Comment: One commenter suggested that Grantees should have responsibility for establishing a complaint process for resolution of disputes or complaints regarding Grantee policies or practices. The role of the Assistant Secretary should only be to respond to appeals from interested parties where final resolution was not achieved through the Grantee complaint process.

Response: The Act at section 658(b)(3) specifically requires the Secretary to establish rules for processing complaints concerning any failure to comply with the Act or the Plan. The Secretary has delegated this responsibility to the Assistant Secretary for ACF.

As provided in this section of the regulations, we will give the Grantee the opportunity to resolve complaints before any action is taken by the Department. Grantees are free to establish a process for handling programmatic complaints received directly from complainants or those forwarded by the Department.

Part 99—Procedure for Hearings for the Child Care and Development Block Grant

In the interim final rule, we added a new part to the Code of Federal Regulations (CFR) which provides an administrative hearings process required for processing appeals of Block Grant Plan disapprovals, pursuant to § 98.18, and the compliance process, pursuant to subpart J. Although there are other regulations in the CFR that address the hearing process for similar programs, the unique characteristics of the Block Grant disapproval and compliance processes justified inclusion of a separate hearings regulation. In addition, one objective of this regulation was to create a stand-alone document which would, to the extent possible, contain all Federal rules necessary for administering the Block Grant program.

Rather than amend existing regulations relating to other hearing processes, we felt that the best approach was to include a process specific to the Block Grant. The process is not substantially different from similar provisions for other programs. In fact, we used the regulation at 45 CFR part 213 as the model for part 99.

The regulation is self-explanatory. It contains information related to the conduct of hearings for the Block Grant. When an applicant or Grantee wishes to appeal an adverse decision regarding a Block Grant Plan or Plan amendment, the hearings process in part 99 will be followed. Similarly, should the Department determine that a Grantee has failed to comply with a provision of the Act, part 98 of the regulation, or its Plan, we will follow the hearings process in part 99 in processing the appeal.

Subpart A of the regulations provides the scope of the rules and specifies the rules regarding the record of the proceedings and the filing and service of papers; subpart B provides the rules governing the issuance of notices, the scheduling of the hearing, the issues to be included and who can participate in the hearing; subpart C specifies who presides at the hearing, the duties and responsibilities of the presiding officer, the rights of all the parties, and the rules governing the evidence to be presented; and subpart D specifies the posthearing procedures and decisions.

Only one agency commented on this part of the regulations. We discuss its comments below.

Issues at Hearings (Section 99.14 of the Regulations)

Comment: The commenter recommended that § 99.14(b) be amended to provide that if new or modified issues are presented, such issues must be published in the **Federal Register**.

Response: We agree and have added the necessary language to the regulation.

Discovery (Section 99.23 of the Regulations)

Comment: The same commenter recommended that § 99.23 be amended to provide that discovery rights are available to individuals or groups granted party status under § 99.15.

Response: We agree that all persons or groups who are granted party status should have the right to conduct discovery against opposing parties. We have, therefore, amended the regulation.

Additional Information

Coordination in Planning and Service Delivery

The Block Grant is but one of many programs designed to help low-income families meet their child care needs. This section of the preamble provides general information on a number of programs which Grantees may consider as they implement Block Grant programs and in developing programs which provide "seamless services" to recipients and providers. In order to make maximum use of the existing and increased resources of the programs described below, as well as other programs at the Federal, State, and local level, Grantees should coordinate planning and service delivery with these programs.

ACF-Administered Child Care Programs

Other Federal programs specifically support child care services. In fact, ACF administers programs which constitute a continuum of child care services for families in various stages of need, by supporting families' efforts to remain or become self-sufficient. In addition to the Block Grant, ACF administers the following programs which specifically provide child care necessary for parents to work or participate in job training and education programs:

—*At-Risk Child Care*—funds (\$300 million appropriated in FY 1992) provide child care assistance to families who are not receiving AFDC, need child care in order to work, and would be at risk of becoming eligible

for AFDC if they did not receive child care assistance.

- Transitional Child Care*—funds (\$83 million appropriated for FY 1992) provide up to 12 months of transitional child care for recipients who leave AFDC due to increased income from employment.
- Child Care for AFDC Recipients*—funds (\$350 million appropriated for FY 1992) support current AFDC recipients' efforts to participate in JOBS or other approved education and training activities to help them become self-sufficient and leave welfare. These funds are also available to AFDC recipients in families who need child care in order to accept or maintain employment.
- AFDC Child Care Disregards*—(Approximately \$10 million in FY 1992) support AFDC recipients' efforts to work by providing offsets against income from work for a portion of recipients' child care costs.

The Block Grant provides Grantees a great deal of flexibility in program design, in defining eligibility conditions, and in targeting. Grantees will be able to use many of the definitions and eligibility rules from other programs to achieve consistency among these programs.

In addition to the programs listed above which are specifically targeted at providing child care, ACF administers a number of other programs which may provide child care, at the option of the State, or which provide services related to child care. The most extensive of these is the Head Start program.

Head Start

Head Start provides comprehensive services to enhance the development of low-income preschool children. Since its inception in 1965, Head Start has provided educational, medical, dental, nutrition, mental health, and social services to over 12 million children and their families.

Currently, about half of all Head Start parents work full- or part-time. Block Grant programs can develop mutually beneficial arrangements to provide extended-day child care for that subpopulation of Head Start children who need such care due to their parents' work or training schedules or to provide Block Grant recipients with a Head Start experience. We encourage Head Start Grantees to participate in planning and coordinating design and implementation of Block Grant programs.

Agencies administering the Block Grant that wish to pursue agreements with Head Start should contact our

Regional Office in their area as well as their State's Head Start association.

We are particularly interested in ensuring that families are able to take advantage of the Head Start experience. One way to ensure that families can participate is to arrange child care to cover hours before and after the Head Start day for families in need of such care. Convenient child care locations make it easier for parents to work a full day while their children are in care and will both enhance Head Start programs and promote self-sufficiency.

Other Related Programs

The following ACF programs may also be of interest to Grantees in coordinating child care services:

- Social Services Block Grant*—In FY 1990, forty-five States reported they provided child care services under the Social Services Block Grant (title XX of the Social Security Act).
- Child Welfare Services*—Title IV-B of the Social Security Act allows States the option to provide child care and to assist child care centers in meeting State and local licensing requirements. Expenditures for child care services necessary solely for employment and training are limited to the funding level that was available in FY 1979.
- Dependent Care Planning and Development*—Grants are made to States to support activities related to dependent care (including child care, elder care, and care for disabled individuals) resource and referral systems and activities related to school-age child care services. States may use funds to support 75 percent of the costs of projects associated with the planning, development, establishment, operation, expansion, or improvement of such services. They may not use their grants for direct payments to intended recipients of dependent care services, nor for construction or renovation.
- Child Development Associate (CDA) Scholarship Program*—States and areas receiving grants under the Social Services Block Grant are eligible to apply for funds to use as scholarships to income-eligible candidates for the CDA credential.

Child Support Enforcement

Child Support Enforcement (CSE) is an important component of ACF's efforts to foster the financial stability of families. The CSE program was developed to ensure that, whenever possible, children are supported by their parents.

State CSE agencies provide services to both AFDC and non-AFDC families.

The services offered include: locating the non-custodial parent; establishing paternity; establishing a child support order; enforcing the order; and collecting the support that is due. Grantees are encouraged to collaborate with their State CSE agency on methods for providing child support information and referral services to their clients.

Other Federal programs also provide benefits which relate to child care. In particular, the Earned Income Tax Credit (EITC) and Child Care Food Program may be of interest to Grantees in coordinating services.

Earned Income Tax Credit

Three new and expanded provisions of the EITC provide enhanced refundable tax credits to low-income, working families. This refundable credit can equal up to 36 percent of the earned income of eligible families.

EITC is targeted to families with 1992 adjusted gross incomes less than \$22,000 (roughly twice the poverty level for a family of three). The new EITC provisions:

- (1) Increase the basic EITC and adjust it for family size;
- (2) Provide a new supplemental child or "wee tot" credit; and
- (3) Add another credit for health insurance.

Tax credits reduce families' Federal income tax liabilities. Because EITC is refundable and low-income families have little, if any, income tax liability, EITC results in a payment to them. In any case, EITC affords maximum parental choice by providing parents with more income to use as they see fit to care for their children.

Child Care Food Program

The Department of Agriculture provides Federal funds to initiate, maintain, and expand non-profit food service for children in non-residential settings which provide child care. The Child Care Food Program enables child care providers to integrate a nutritious food service with organized care services.

Child Abuse and Neglect

The most recent incidence study estimates that more than one million children nationwide experienced demonstrable harm as a result of maltreatment in 1986. Child care providers are generally required to report suspected child abuse or neglect. For providers to meet this responsibility, many will need training to understand the conditions under which abuse and neglect occur, to know how to recognize the pertinent indicators, and to know how to help when they suspect abuse or

neglect. One source of information is a publication of the National Center on Child Abuse and Neglect, *Child Abuse and Neglect: A Shared Community Concern*. For this publication, a bibliography of materials related to child maltreatment (publication number 07-91175, \$3.00), or a free catalogue of other available publications, Grantees may contact: The Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, D.C. 20013, telephone (703) 385-7565 or 1-800-394-3366.

Health Care

We suggest that States consider developing contacts with local Block Grant administrators and local health officials to ensure that providers are able to comply with State requirements relating to health and safety, pursuant to § 98.41 of the Block Grant. Local health officials can offer providers with practical information on health matters such as preventing the spread of communicable diseases, first aid, and immunization schedules. If a Grantee desires further assistance in the establishment of health and safety standards related to immunization, ACF will provide references to, or copies of, appropriate studies in this area. For example, the Center for Disease Control (CDC) of the Department provides project grant support to assist State and local health agencies in planning, developing, and conducting childhood immunization programs.

With the recent resurgence of measles, childhood immunization is receiving renewed attention. Low immunization coverage, particularly among minority groups, appears to be a primary cause. Through linkages with local health agencies, Grantees can seek ways to improve the immunization coverage among young children. For example, local administrators could establish a process for providers to refer parents to local health officials in order to meet the immunization requirements established by the State.

CDC believes appropriate administration of safe and effective vaccines remains the most cost-effective method of preventing human suffering and reducing economic costs resulting from vaccine-preventable diseases. For example, CDC research shows that savings from each dollar spent on the measles-mumps-rubella vaccine range from \$10 to \$14 in future medical costs.

Immunization would also support the National Health Promotion and Disease Prevention Objectives included in "Healthy People 2000." Two specific objectives for the Year 2000 are: (1) To

increase basic immunization levels among children under age two to at least 90 percent (from a baseline of 70-80 percent in 1989); and (2) to maintain basic immunization levels of 95 percent of children in licensed child-care facilities and children in kindergarten through post-secondary institutions. Since 1981, 95 percent or more of elementary students have been adequately immunized.

Unfortunately, vaccine use for preschool children has not been as extensive. In some inner-city populations, immunization levels for children under age two are less than 50 percent. This low immunization coverage, particularly among minority groups, appears to be the primary cause of the recent resurgence of measles. In 1990, over 26,000 measles cases and 97 suspected measles-related deaths were reported. Recent investigations of outbreaks by the CDC indicate that many unvaccinated children with measles were enrolled in one or more public assistance programs, particularly WIC or AFDC.

Because of this low immunization coverage, CDC plans to increase its immunization effort and target children under two years of age—particularly inner-city minority children. CDC proposes to use \$8.7 million to better coordinate immunization services with other low-income assistance programs and to improve outreach. An additional \$20 million in incentive grants will be used to reward States and cities which show the most improvement in the previous year in rates of immunization among low-income two-year-olds.

Grantees should be aware of recent publications by a number of organizations which address issues such as infectious disease control, nutrition, injury prevention, and environmental quality. Information regarding such publications is available from ACF. Also, Grantees should be aware that they may use Block Grant funds to pay for immunization outreach efforts. For example, States may use non-service funds under § 98.50 or quality and availability funds under § 98.51 to pay the cost of having a public health nurse immunize children in child care. Information regarding immunization is available from the Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333.

Monitoring

ACF will implement a monitoring plan in the near future. The purpose of this process is to determine technical assistance needs, gather information on best practices and program

characteristics, identify implementation and operational issues, and ensure that Grantee programs meet applicable statutory and regulatory requirements. For example, we will gather information on well-designed and efficient certificate programs in order to assist other Grantees encountering operational difficulties with this requirement.

Technical Assistance

ACF plans to provide technical assistance to Grantees, as required by section 658(a)(3) of the Act. This section of the Act also gives the Secretary the authority to provide technical assistance on a reimbursable basis. We received a number of comments requesting technical assistance in specific areas, such as requests for publications and assistance for Tribes in developing child care programs. One commenter suggested that we require Grantees to send staff to technical assistance workshops, because otherwise no funds would be made available by the Grantee for such purposes.

In implementing this provision, we have determined to withhold a percentage of overall Block Grant funds for the purpose of providing technical assistance to Grantees. We will limit the amount to one-quarter of one percent for any fiscal year, beginning no earlier than FY 1992.

We considered requiring Grantees to make payment for technical assistance after it was provided, but rejected this option. First, it would be administratively cumbersome for Grantees and for ACF to process such payments. Second, it would be difficult to plan technical assistance activities with no indication of the amount of funds that would be available. Third, because of the number and diversity of Grantees, a broad range of technical assistance activities will be necessary, resulting in substantial costs. In order for ACF to meet such needs, a substantial and regular funding source is necessary. Setting aside a portion of overall funding will resolve these concerns.

We set the level at one-quarter of one percent because this amount is sufficient to provide meaningful technical assistance to Grantees but will not cause substantial changes or restrictions for Grantee programs. This amount is less than the smallest set-aside in the Act—one-half of one percent for the Territories. We have amended the regulation at § 98.60(a) to include language providing for withholding of funds for technical assistance. If the Secretary determines to withhold less than one-quarter of one percent, the

balance will be made available to Grantees.

We will also serve as a clearinghouse to disseminate information to Grantees. For example, as we note in the preamble to § 98.41, ACF will make available copies of or references to appropriate studies regarding health and safety standards, including information related to immunization. We will also make available information developed by States under their Child Care Improvement Grants. Such information will include management improvements for licensing and monitoring and provider training packages related to licensure such as health and safety and fire safety.

ACF has already held a number of forums and workshops for State and Tribal Grantees in order to provide information regarding effective program implementation. We will continue to elicit comments and recommendations regarding implementation issues. One example of technical assistance is preparation and dissemination of a prototype brochure for parents which explains parental rights and options in selecting a child care provider. Another example is advice regarding managing the various child care funding streams, which can be administratively demanding both for program administrators and providers.

We believe that identifying such issues, and sharing workable solutions based on State experience with the operations of child care programs, will form one basis for technical assistance to be provided by ACF. We are therefore interested in the types of and content of such implementation issues, as well as suggested solutions. We would also like to receive suggestions regarding the nature of any other technical assistance which ACF might provide.

Automation

We encourage Grantees to consider their long-range approach to automation as they develop automated systems to support the delivery of child care services under the Block Grant. We urge systems development efforts which focus on the effective delivery of child care services; Grantees should not simply build automated systems which center solely on satisfying reporting requirements.

Automated systems will be needed to support some requirements under the Block Grant. Some examples where the application of automated systems may support Block Grant requirements could include: providing a certificate program which may be used as flexibly as cash,

managing the availability of certificates throughout the program period, providing a simple and timely registration process, and ensuring speedy payment of providers. In addition, Grantees will need to manage and track the use of the Block Grant funds, pursuant to §§ 98.50 and 98.51. Therefore, accounting and reporting functions will also be needed.

One of the challenges facing Grantees in their approach to automation is ensuring coordination with other child care programs. Managing the various funding streams in a way which affords individual families "seamless service" will be critical to both service delivery and Grantees' approach to systems development. ACF was consolidated in part to facilitate this very outcome. Approaches to automation should optimize this "seamless service" concept.

To realize the goal of seamless child care service delivery at the State level, ACF intends to provide States with the flexibility and opportunity to coordinate or consolidate information among State agencies administering child care for the AFDC program, the Transitional Child Care program (TCC), At-Risk Child Care Program (ARCC), the Block Grant, and child care services provided through title XX. Automated systems which support child care service delivery to AFDC applicants and recipients, including JOBS participants (e.g., Family Assistance Management Information Systems [FAMIS] and JOBS Automated Systems [JAS]), can be used as the infrastructure for efficient and effective seamless service delivery of the TCC, ARCC, and Block Grant programs. For additional information contact: Director, Division of State System Approvals, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401-9361.

Although Block Grant funds can be used for systems, we believe that Congress intended the Block Grant funds to be used primarily for child care services. In considering approaches to automation, we encourage Grantees to look for ways to apply technology across the continuum of child care programs, minimize disparate system development efforts, and integrate their child care service delivery through automation.

Program Implementation

The Act does not contain language regarding the effective date of program implementation. However, since funding became available in September of 1991, we expected that most States, Territories, and Tribal applicants would

request funding in FY 1991, and that has been our experience. As a consequence, we observed the following timeline in implementing the program at the Federal level.

As described below under § 98.16, ACF issued a preprinted Plan with approval by OMB, to be included with an Application for FY 1991 funding under the Block Grant. As required by section 658D(b)(1)(C) of the Act, the lead agency must hold at least one hearing in conjunction with the development of the Plan. Applications were generally approved within 45 days of submission, unless additional information was needed from the lead agency.

Funding for State expenditures for planning was available for the period from November 5, 1990, the date of enactment of the legislation, for Applications for FY 1991 funds. More information concerning funding is included above.

This rule is effective upon publication. However, changes necessitated by revisions in the regulation may require time for implementation. We will allow a reasonable period of time for such changes.

Of course, Grantees may make changes which result from the additional flexibility permitted by these regulations at any time. (If a Plan amendment is necessary, the amendment must be submitted to ACF within 60 days of the intended change. This requirement is discussed in § 98.18 of the preamble).

Program Implementation Dates: The following is a list of important deadlines for the Block Grant:

- January 1, 1992: Plans for FY 1992 must have been postmarked;
- April 1, 1992: States must have notified ACF if they will be using their entire FY 1991 allotment;
- August, 1992: Applications for FY 1992 allotments, including Plans for new Grantees, are due. The Department will send an Action Transmittal to announce the exact date and provide further information;
- September 30, 1992: All FY 1992 funds are available for Federal obligation;
- September 30, 1992: FY 1991 funds must be obligated by State and Territorial Grantees;
- October 1, 1992: Certificate systems must be in effect.
- December 31, 1992: Grantees must submit an interim financial report and an interim program report for FY 1991 funds.

(Catalog of Federal Domestic Assistance Programs: 93.037, Child Care and Development Block Grant)

List of Subjects

45 CFR Part 98

Child Care, Grant program—social programs, Parental Choice, Reporting and recordkeeping requirements.

45 CFR Part 99

Administrative practice and procedure, Child care, Grant program—social programs.

Dated: July 20, 1992.

Jo Anne B. Barnhart,
Assistant Secretary for Children and Families.

Approved: July 23, 1992.

Louis W. Sullivan,
Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, parts 98 and 99 of subtitle A of title 45 of the Code of Federal Regulations are revised to read as follows:

PART 98—CHILD CARE AND DEVELOPMENT BLOCK GRANT

Subpart A—Purposes and Definitions

Sec.

- 98.1 Purposes.
- 98.2 Definitions.
- 98.3 Effect on State law.

Subpart B—General Application Procedures

- 98.10 Lead agency responsibilities.
- 98.11 Administration under contracts and agreements.
- 98.12 Coordination and consultation.
- 98.13 Application content and procedures.
- 98.14 Plan process.
- 98.15 Assurances.
- 98.16 Plan provisions.
- 98.17 Period covered by Plan.
- 98.18 Approval and disapproval of Plans and Plan amendments.

Subpart C—Eligibility for Services

- 98.20 A child's eligibility for child care services.
- 98.21 A child's eligibility for early childhood development and before- and after-school care services.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

- 98.30 Parental choice.
- 98.31 Parental access.
- 98.32 Parental complaints.
- 98.33 Consumer education.
- 98.34 Parental rights and responsibilities.

Subpart E—Program Operations (Child Care Services)—State and Provider Requirements

- 98.40 Compliance with applicable State and local regulatory requirements.
- 98.41 Health and safety requirements.
- 98.42 Sliding fee scales.
- 98.43 Payment rates.

- 98.44 Priority for child care services.
- 98.45 Registration.
- 98.46 Nondiscrimination in admissions on the basis of religion.
- 98.47 Nondiscrimination in employment on the basis of religion.

Subpart F—Use of Block Grant Funds

- 98.50 Child care services.
- 98.51 Activities to improve the quality of child care and to increase the availability of early childhood development and before- and after-school care services.
- 98.52 Administrative activities.
- 98.53 Supplementation.
- 98.54 Restrictions on the use of funds.
- 98.55 Cost allocation.

Subpart G—Financial Management

- 98.60 Availability of funds.
- 98.61 Allotments for States.
- 98.62 Allotments for Territories and Tribes.
- 98.63 Reallocation.
- 98.64 Financial reporting.
- 98.65 Audits.
- 98.66 Disallowance procedures.
- 98.67 Fiscal requirements.

Subpart H—Program Reporting Requirements

- 98.70 Annual report requirement.
- 98.71 Content of report.

Subpart I—Indian Tribes

- 98.80 General procedures and requirements.
- 98.81 Application and Plan.
- 98.82 Coordination.
- 98.83 Requirements for Tribal programs.

Subpart J—Monitoring, Non-Compliance and Complaints

- 98.90 Monitoring.
- 98.91 Non-compliance.
- 98.92 Penalties and sanctions.
- 98.93 Complaints.

Authority: 42 U.S.C. 9858.

Subpart A—Purposes and Definitions

§ 98.1 Purposes.

(a) The purpose of the Child Care and Development Block Grant is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and Tribal organizations in order to:

- (1) Provide low-income families with the financial resources to find and afford quality child care for their children;
- (2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the Block Grant;
- (3) Provide parents with a broad range of options in addressing their child care needs;
- (4) Strengthen the role of the family;
- (5) Improve the quality of, and coordination among, child care programs and early childhood development programs; and

(6) Increase the availability of early childhood development and before- and after-school care services.

(b) The purpose of these regulations is to provide the basis for administration of the Block Grant. These regulations provide that Grantees:

- (1) Maximize parental choice through the use of certificates and through grants and contracts;
- (2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;
- (3) Provide quality child care that meets applicable State and local requirements;
- (4) Coordinate planning and delivery of services at all levels;
- (5) Design flexible programs which provide for the changing needs of recipient families;
- (6) Administer the Block Grant responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided;
- (7) Maximize the impact of the additional funding available under the Block Grant by ensuring that Federal funds are used to supplement, not supplant, existing services, and ensuring that administrative costs are minimized; and
- (8) Design programs which provide uninterrupted service to families and providers, to the extent statutorily possible.

§ 98.2 Definitions.

For the purpose of this part and part 99:

- (a) *The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, as codified at 42 U.S.C. 9858;
- (b) *ACF* means the Administration for Children and Families;
- (c) *The Application* is the request from a potential Grantee for funding under the Block Grant and includes such information as the amount of funding requested and the projected budget for the program, pursuant to § 98.13;
- (d) *Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services;
- (e) *Before- and after-school services* means services which meet the requirements of § 98.51(e);
- (f) *The Block Grant* means the Child Care and Development Block Grant; *Block Grant programs* will be used to generically describe all activities under the Block Grant, including child care

services and quality and availability improvements pursuant to section 658E(c)(3)(B) of the Act, as well as quality and availability improvements, pursuant to sections 658E(c)(3)(C), 658G and 658H of the Act;

(g) *Caregiver* means an individual who provides child care services directly to an eligible child on a person-to-person basis;

(h) *Categories of care* means center-based child care, group home child care, family child care and in-home care;

(i) *Center-based child care provider* means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s) work;

(j) *Child care certificate* means a certificate (that may be a check or other disbursement) that is issued by a Grantee directly to a parent who may use such certificate only as payment for child care services, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

(k) *Child care provider that receives assistance* means a child care provider that receives Federal funds under the Block Grant pursuant to grants, contracts or loans, but does not include a child care provider to whom Federal funds under the Block Grant are directed only through the operation of a certificate program;

(l) *Child care services*, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

(m) *The Department* means the Department of Health and Human Services;

(n) *Early childhood development program* means a program that meets the requirements of § 98.51(d);

(o) *Elementary school* means a day or residential school that provides elementary education, as determined under State law;

(p) *Eligible child* means an individual who meets the requirements of § 98.20;

(q) *Eligible child care provider* means:

- (1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40 or, if exempt from such requirements, is registered before

receipt of payment as described in § 98.45; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, niece, or nephew of such provider, if such provider is registered before receipt of payment and complies with any State requirements that govern child care provided by the relative involved.

(r) *Family child care provider* means one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

(s) *Grantee* means the State, Territorial or Tribal governmental entity to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

(t) *Group home child care provider* means two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

(u) *Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(v) *In-home child care provider* means an individual who provides child care services in the child's own home;

(w) *Lead agency* means the agency designated under §§ 98.10 and 98.16(a)(1);

(x) *Licensing or regulatory requirements* means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or Tribal law other than those required pursuant to § 98.45;

(y) *Liquidation period* means the one-year period following the obligation

period, and pertains only to State and Territorial Grantees;

(z) *Obligation period* means the time period during which a fiscal year's grant must be obligated, and pertains only to State and Territorial Grantees;

(aa) *Parent* means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis*;

(bb) *The Plan* means the Plan for the implementation of programs under the Block Grant;

(cc) *Program period* means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

(dd) *Programs* will be used generically to describe all activities under the Block Grant, including child care services and other activities pursuant to § 98.50 as well as quality and availability improvements pursuant to § 98.51;

(ee) *Provider* means the entity providing child care services;

(ff) *The regulation* refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

(gg) *Secondary school* means a day or residential school which provides secondary education, as determined under State law;

(hh) *Secretary* means the Secretary of the Department of Health and Human Services;

(ii) *Sectarian organization or sectarian child care provider* means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

(jj) *Sectarian purposes and activities* means any religious purpose or activity, including but not limited to religious worship or instruction;

(kk) *Services for which assistance is provided* means all child care services funded under the Block Grant, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

(ll) *Sliding fee scale* means a system of cost sharing by a family based on income and size of the family, in accordance with § 98.42;

(mm) *State* means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana

Islands, and the Trust Territory of the Pacific Islands (Palau), and includes Tribes unless otherwise specified;

(nn) *Tribe and Tribal Grantee* refer to Indian Tribes and Tribal organizations as defined at paragraphs (u) and (oo) of this section;

(oo) *Tribal organization* means the recognized governing body of any Indian tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

(pp) *Types of providers* means the different classes of providers under each category of care. For the purposes of the Block Grant, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

§ 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent Federal Block Grant funds from being expended for the purposes provided in the Act, without limitation, then States must segregate State and Federal funds.

Subpart B—General Application Procedures

§ 98.10 Lead agency responsibilities.

The lead agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the Block Grant program, directly or through other State agencies, in accordance with § 98.11;

(b) Submit an Application for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in

developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c); and

(e) Coordinate Block Grant services with other Federal, State and local child care and early childhood development programs, including such programs for the benefit of Indian children, pursuant to § 98.12.

§ 98.11 Administration under contracts and agreements.

(a) The lead agency has broad authority to share responsibilities for the administration of the program with other State agencies. In addition, the lead agency can share implementation of the program with other public or private local agencies; however:

(1) The lead agency must retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The lead agency shall serve as the single point of contact for issues involving the administration of the Grantee's Block Grant program; and

(3) The sharing of administrative and implementation responsibilities must be governed by written agreements which specify the mutual roles and responsibilities of the lead agency and the other agencies in meeting the requirements of this part.

(b) In retaining overall responsibility for the administration of the program, the lead agency must:

(1) Determine the basic usage and priorities for the expenditure of Block Grant funds;

(2) Promulgate all rules and regulations governing overall administration of the Plan;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subgrantees and contractors;

(6) Monitor programs and services;

(7) Fulfill the responsibilities of the Grantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and

(8) Ensure that all State and local agencies with whom it shares administrative responsibilities, including agencies and contractors which determine individual eligibility, operate according to the rules established for the program.

§ 98.12 Coordination and consultation.

The lead agency must:

(a) Coordinate the provision of services for which assistance is provided under this part with other Federal, State, and local child care and early childhood development programs, and before- and after-school programs as provided under § 98.10(e).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State submitting Applications in accordance with subpart I of this part.

§ 98.13 Application content and procedures.

(a) An Application for Block Grant funds must be made by the chief executive officer of a State. The Application must contain:

(1) The program period, as defined in § 98.2(cc), for which the Application is made;

(2) The amount of funds requested for such period;

(3) An assurance that the Grantee will comply with the requirements of the Act and this part;

(4) Pursuant to 45 CFR part 93, a lobbying certification which assures that the funds will not be used for the purpose of influencing, and, if necessary, a Standard Form LLL (SF-LLL) which discloses lobbying payments (Tribal applicants are not required to submit either the certification or form);

(5) Pursuant to 45 CFR 76.600, an assurance that the Grantee provides a drug-free workplace or a statement that such an assurance has already been submitted for all HHS grants;

(6) A budget of expenditures, which provides an estimate of the use and distribution of Block Grant funds during the period covered by the Application, including:

(i) A break-out of program activities under § 98.50, including a list of activities to improve the availability and quality of child care, and administrative costs, as described in § 98.52(b), the Grantee anticipates will be necessary to carry out the stated purposes of the program;

(ii) A detailed explanation, pursuant to § 98.50(d)(3), including appropriate documentation for the budget expenditures, if not consistent with the limitation at § 98.50(d)(2); and

(iii) A break-out of program activities under § 98.51 including administrative costs, as described in § 98.52(b), which the Grantee anticipates will be necessary to carry out the stated purpose of the program.

(7) Pursuant to 45 CFR 76.500, certification that no principals have been debarred;

(8)(i) For the initial Application, or first Application after publication of the final rule implementing the Block Grant, the amounts of Federal, State, and local public funds expended for the support of child care and related programs during the base period, pursuant to § 98.53(b);

(ii) For subsequent Applications, the amounts of such funds expended during the applicable subsequent period; and,

(iii) If applicable, information regarding the nature, extent and basis for any reduction in Federal expenditures, and, for Tribal Grantees, in State expenditures, for programs other than the Block Grant, for the subsequent period;

(9) Assurances that the Grantee will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended);

(10) The Block Grant Plan, at times and in such manner as required in § 98.17; and

(11) Such other information as specified by the Secretary.

(b) Applications must be submitted annually or less frequently, as specified by the Secretary, at such time and in such manner as prescribed by the Secretary.

(c) In its initial Application, an Indian Tribe must provide a description of current service delivery skills, personnel, resources, community support, and other necessary components that will enable it to satisfactorily carry out the proposed Plan. Initial Applications submitted by consortia must also contain the additional information required under § 98.80 (c)(1) and (c)(4).

§ 98.14 Plan process.

In the development of each Plan, as required pursuant to § 98.17, the lead agency shall:

(a) Coordinate the provision of Block Grant services with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children;

(b) Consult with appropriate representatives of local governments to consider local child care needs and resources, the effectiveness of existing

child care and early childhood development services, and the methods by which Block Grant funds can be used to effectively address local child care shortages; and

(c) Hold at least one hearing, with adequate notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

§ 98.15 Assurances.

The Block Grant Plan must include assurances that:

(a) Upon approval, the Grantee will have in effect a program which complies with the provisions of the Plan;

(b) The parent(s) of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under § 98.50 is given the option either:

(1) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(2) To receive a child care certificate as defined in § 98.2(j);

(c) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the lead agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(d) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(e) The Grantee, in accordance with § 98.31, has procedures in place to ensure that providers of child care services for which assistance is provided under the Block Grant, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(f) The Grantee, as required by § 98.32, maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public, on request;

(g) Consumer education information will be made available to parents and the general public within the State (or other area served by the Grantee) concerning licensing and regulatory requirements, complaint procedures, the options available to parents through certificates, and policies and practices relative to child care services within the State (or other area served by the Grantee), as required by § 98.33;

(h) In accordance with § 98.40, all providers of child care services for which assistance is provided under the Block Grant will comply with all licensing and regulatory requirements applicable under State or local law;

(i) Providers of child care services for which assistance is provided under the Block Grant that are not licensed or regulated for the purpose of providing child care under State or local law are required to be registered with the Grantee prior to payment being made and that such providers shall be permitted to register with the Grantee after selection by the parents of eligible children and before such payment is made, as required by § 98.45;

(j) There are in effect within the State (or other area served by the Grantee), under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the Block Grant, pursuant to § 98.41;

(k) In accordance with § 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the Block Grant comply with all applicable State or local health and safety requirements;

(l) If the State reduces the level of standards applicable to child care services provided in the State (or other area served by the Grantee) after November 5, 1990, the Grantee shall inform the Secretary of the rationale for such reduction in the annual report of the Grantee;

(m) The Grantee will, not later than 18 months after submission of the first Application, complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State (or other area served by the Grantee) unless the Grantee has reviewed such law, requirements, and policies in the three-year period ending on November 5, 1990;

(n) Pursuant to § 98.53, funds received through the Block Grant will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs within the State (or other area served by the Grantee);

(o) Payment rates for the provision of child care services, in accordance with § 98.43, will be sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not

eligible to receive assistance under this program or under any other Federal or State child care assistance programs; and

(p) With respect to State and local regulatory requirements, health and safety requirements, payment rates, and registration requirements, State or local rules, procedures or other requirements promulgated for the purpose of the Block Grant will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(g).

§ 98.16 Plan provisions.

(a) A Block Grant Plan must contain the following:

(1) Specification of the lead agency whose duties and responsibilities are delineated in § 98.10;

(2) The assurances listed under § 98.15;

(3) A description of how the Block Grant program will be administered and implemented, if the lead agency does not directly administer and implement the program;

(4) A description of the coordination and consultation processes involved in the development of the Plan, pursuant to § 98.14 (a) and (b);

(5) A description of the public hearing process, pursuant to § 98.14(c);

(6) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.44:

- (i) Special needs child;
- (ii) Physical or mental incapacity (if applicable);
- (iii) Attending (a job training or educational program);
- (iv) Job training and educational program;
- (v) Residing with;
- (vi) Working;
- (vii) Protective services (if applicable);
- (viii) Very low income; and
- (ix) *in loco parentis*.

(7) For child care services and activities to improve the availability and quality of child care, pursuant to § 98.50:

- (i) A description of such services and activities;
- (ii) Specification of the conditions under which availability of in-home care is limited (i.e., differences in payment rates);
- (iii) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(iv) Provision for the reservation of 75 percent of overall Block Grant funds for such purposes, together with a plan for the allocation of, and prioritization of,

such funds for such services and activities;

(v) Any additional eligibility criteria or priority rules (with appropriate definitions) established pursuant to § 98.20(b); and

(vi) Any eligibility criteria or priority rules for the receipt of grants and contracts;

(8) For activities to improve the quality of child care and to increase the availability of early childhood development and before- and after-school care services, pursuant to § 98.51:

(i) A description of such activities;

(ii) A list of political subdivisions in which such activities are offered, if such activities are not available throughout the entire service area;

(iii) Provision for the reservation of 25 percent of overall Block Grant funds for such purposes, together with a plan for allocation of, and prioritization of, such funds for such services and activities;

(iv) Any additional eligibility criteria or priority rules for children receiving such services established pursuant to § 98.21(b), with appropriate definitions; and

(v) A description of any eligibility criteria or priority rules for the receipt of grants and contracts, in addition to those in § 98.51(c)(2);

(9) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the Block Grant for child care services under § 98.50 and § 98.51, pursuant to § 98.42, if applicable;

(10) A description of the minimum health and safety requirements, applicable to all providers of child care services for which assistance is provided under the Block Grant, in effect pursuant to § 98.41;

(11) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(12)(i) Payment rates and a description of the methodology used to establish such rates for reimbursement of child care services pursuant to § 98.43; and, if applicable,

(ii) Based on a methodologically sound system for determining market-costs:

(A) Justification of the Grantee's decision not to provide for differences in payment based on the setting (categories of care), age of the child or additional costs of providing care for children with special needs; or

(B) Justification for setting differential rates(s) within particular categories of

care, including a description of the single system for providing child care pursuant to § 98.43(e)(2);

(13) A description of the registration process, including the timeframes within which payment will be made, pursuant to § 98.45;

(14) If the Grantee does not permit the expenditure of State funds for child care services unless it is first verified that certain requirements are met (e.g., a certification process), a description of the applicable process and timeframes;

(15) A description of activities that are planned to encourage public-private partnerships which promote business involvement in meeting child care needs, pursuant to § 98.71(b)(4);

(16) A description of the methodology used to establish the level of effort, if the Grantee chooses to use other than a level of government basis, pursuant to § 98.53(b)(1);

(17) Such other information as specified by the Secretary; and

(b) For Indian Tribes:

(1) The Plan must include the basis for determining family eligibility pursuant to § 98.80(f).

(2) Tribal programs are not subject to paragraph (a)(6)(viii) and prioritization under paragraph (a)(8)(iii) of this section.

(3) Plans for those Tribes specified at § 98.83(f) (i.e., Tribes with small grants) are not subject to the requirements in paragraphs (a)(7)(iv), (a)(8)(iii), and (a)(11) of this section, unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program.

§ 98.17 Period covered by plan.

(a) For States and Territories, the initial Plan must cover a period of three years, and all subsequent Plans must cover a period of two years.

(b) For Indian Tribes, the initial Plan and any subsequent Plans must cover a period of two years.

(c) The lead agency must submit a new Plan prior to the expiration of the time period specified in paragraphs (a) and (b) of this section, at such time as required by the Secretary in written instructions.

§ 98.18 Approval and disapproval of plans and plan amendments.

(a) *Plan approval.* The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) *Plan amendments.* Approved Plans must be amended whenever a

substantial change in the program occurs. A Plan amendment must be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(c) *Appeal of disapproval of a Plan or Plan amendment.* (1) An applicant or Grantee dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Grantee of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Grantee, unless the Assistant Secretary and the applicant or Grantee agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child must:

(1)(i) Be under 13 years of age; or
(ii) At Grantee option, be under age 18 (or 19, if the State so provides in its definition of dependent child in its plan under title IV-A of the Social Security Act) and be physically or mentally incapable of caring for himself or herself, or under court supervision;

(2) Reside with a family whose income does not exceed 75 percent of

the State's median income for a family of the same size; and

(3)(i) Reside with a parent or parents (as defined in § 98.2(aa)) who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2(aa)) other than the parent(s) described in paragraph (a)(3)(i) of this section. At Grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.

(b) Pursuant to § 98.16(a)(7)(v), a Grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under Subpart D; or

(3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

§ 98.21 A child's eligibility for early childhood development and before- and after-school care services.

(a) If a Grantee subsidizes, through grants or contracts under § 98.51, early childhood development services or before- and after-school care services for an individual child, the child must meet the eligibility conditions under § 98.20(a).

(b) Grantees may set additional conditions of eligibility or priority rules for children or families receiving such services funded under § 98.51, so long as such conditions do not violate the provisions of § 98.51(c)(2), or the Plan, and do not discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child

care services under § 98.50 must be offered a choice:

(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(2) To receive a child care certificate as defined in § 98.2(j).

Such choice must be offered any time that child care services under § 98.50 are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Must be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(4) May be expended by providers for any sectarian purpose or activity which is part of the child care services, including sectarian worship or instruction; and

(5) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificate programs under paragraph (a)(2) of this section must be in operation by October 1, 1992.

(e) Child care certificates must be made available to any parents offered services under § 98.50.

(f)(1) For services provided under § 98.50, certificates under paragraph (a)(2) of this section must permit parents to choose from a variety of child care categories, including:

- (i) Center-based child care;
- (ii) Group home child care;
- (iii) Family child care; and
- (iv) In-home child care, as limited, pursuant to 98.16(a)(7)(ii);

Under each of the above categories, care by a sectarian provider may not be limited or excluded.

(2) Grantees must provide information regarding the range of provider options under paragraph (f)(1) of this section, including care by sectarian providers and relatives, to families offered services under § 98.50.

(g) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, payment rates under § 98.43,

and registration requirements under § 98.45, Block Grant funds will not be available to a Grantee if State or local rules, procedures or other requirements promulgated for purposes of the Block Grant significantly restrict parental choice by:

(1) Expressly or effectively excluding:

(i) Any category of care or type of provider, as defined in § 98.2; or

(ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

§ 98.31 Parental access.

Grantees must have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider.

§ 98.32 Parental complaints.

Grantees must:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding such parental complaints available to the public on request.

§ 98.33 Consumer education.

Grantees must make available to parents and the general public consumer education information about all parental options, including the options available through child care certificates, pursuant to § 98.30(f), and other policies and practices which relate to child care services, including any applicable licensing and regulatory requirements and complaint procedures.

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services)—State and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) Grantees must provide assurances that:

(1) Within the area served by the Grantee, all providers of child care

services for which assistance is provided under this part comply with any licensing or regulatory requirements, as defined in § 98.2(x), applicable under State, local, and Tribal law; and

(2) Providers that are not required to be licensed or regulated under State, local, or Tribal law are required to be registered, as described in § 98.45(a), with the Grantee prior to any payment being made under the Block Grant.

(b)(1) This section does not prohibit a State from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the Block Grant than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements must be consistent with the safeguards for parental choice in § 98.30(g).

§ 98.41 Health and safety requirements.

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Grantee must provide assurances that there are in effect, within the State (or other area served by the Grantee), under State, local or Tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunization);

(2) Building and physical premises safety; and

(3) Minimum health and safety training appropriate to the provider setting.

(b) Grantees may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(g).

(c) If the Grantee reduces the level of standards applicable to any child care services provided in the State after November 5, 1990, the Grantee must inform the Secretary of the rationale for such reduction in its annual report, pursuant to § 98.71(e).

(d) Not later than eighteen months after submission of its initial Application in accordance with § 98.13, each Grantee must complete a full review of the law applicable to, and the licensing requirements and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the area

served by the Grantee, unless the Grantee has reviewed such law, requirements and policies between November 5, 1987, and November 5, 1990. The findings of this review are to be included in either the first or second annual report pursuant to § 98.71(d).

(e) The requirements in paragraph (a) of this section must apply to all providers of child care services for which assistance is provided under this part, within the area served by the Grantee, except the relatives specified in paragraph (g) of this section.

(f) Each Grantee shall assure that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Grantee, comply with all applicable State or local health and safety requirements described in paragraph (a) of this section.

(g) For the purposes of this section, the term child care providers does not include grandparents, aunts, or uncles, pursuant to § 98.2(q)(2).

§ 98.42 Sliding fee scales.

(a) Grantees shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive Block Grant child care services under §§ 98.50 and 98.51.

(b) Sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.

(c) Grantees may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

(d) The Grantee may apply different sliding fee scales to services under §§ 98.50 and 98.51.

§ 98.43 Payment rates.

(a) The Grantee must assure that the payment rates for the provision of child care under this part are sufficient to ensure equal access, in the area served by the Grantee, for eligible children to comparable child care services provided to children whose parents are not eligible to receive Block Grant assistance or child care assistance under any other Federal, State, or Tribal programs.

(b) In establishing payment rates, Grantees must take into account:

(1) Variations in the cost of providing child care;

(i) Between different categories (i.e., center-based, group home, family, in-home); and

(ii) To children of different age groups; and

(2) The additional costs of providing child care for children with special needs.

(c) Payment rates under paragraph (a) of this section must be consistent with the safeguards for parental choice in § 98.30(g).

(d) Nothing in this section shall be construed to create a private right of action.

(e) Upon petition to the Department through the Plan demonstrating the need for an alternative rate schedule, and subject to affirmative demonstration that the rate schedule will not result in discriminatory payments to providers within categories of care, a Grantee may set a payment rate schedule which includes variation in the payment rate within a category of not more than 10 percent only if:

(1) Such variation is based on a methodologically sound system for determining provider rates, as described in the Plan, pursuant to § 98.16(a)(12)(ii); and

(2) The Grantee is operating a child care program which includes child care funded under title IV-A of the Social Security Act and the Block Grant as a single system. To be considered a single system for the purposes of this section, a Grantee must operate with:

(i) The same payment rates;

(ii) The same sliding fee schedules, to the extent permissible under applicable statutes and regulations; and

(iii) The same mechanisms for selection of and payment to providers, including a certificate program, pursuant to § 98.30(a)(2).

(f) A Grantee may establish a payment schedule which does not reflect differences in provider rates based on the setting (categories of care), age of the child or the additional costs of providing care for children with special needs, but only if such payment rate schedule is based on a methodologically sound system for determining provider rates, as described in the Plan, pursuant to § 98.16(a)(12)(ii).

§ 98.44 Priority for child care services.

Grantees must give priority for services provided under § 98.50(a)(1) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

§ 98.45 Registration.

(a) Grantees must assure that providers of child care services for which assistance is provided under the Block Grant who are not licensed or regulated under State or local law for the purpose of providing child care are

registered with the Grantee prior to receiving payment under the Block Grant.

(b) Grantee registration procedures:

(1) Should facilitate appropriate and prompt payment to providers described in paragraph (a) of this section;

(2) Should permit the Grantee to furnish information to such providers, including information on the availability of health and safety training, technical assistance, and any relevant information pertaining to applicable regulatory requirements; and

(3) Must allow providers to register with the Grantee after selection by the parent(s) of eligible children and before the payment described in paragraph (a) of this section is made.

(c) Registration under the Block Grant must be a simple, timely process through which the Grantee authorizes the provider to receive payment for child care services.

(d) Both the registration requirements and the registration process under paragraph (a) of this section must be consistent with the safeguards for parental choice in § 98.30(g).

§ 98.46 Nondiscrimination in admissions on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in § 98.2(r)) that receive assistance through grants and contracts under the Block Grant shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the Block Grant because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the Block Grant, the Grantee must assure that before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

§ 98.47 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the Block Grant shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2(g).

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a) (1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the Block Grant, the Grantee must assure that, before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2(g).

Subpart F—Use of Block Grant Funds

§ 98.50 Child care services.

(a) After reserving 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in § 98.51, the remaining funds shall be expended for:

(1) Child care services which are provided in accordance with the provisions of paragraph (b) of this section;

(2) Activities to improve the availability and quality of child care, as

described under paragraph (c) of this section; and

(3) Administrative costs under this section.

(b) Child care services must be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

(c)(1) Activities designed to improve the availability and quality of child care include but are not limited to the activities specified in § 98.51(b) (1) and (2).

(2) Pursuant to § 98.16(a)(7)(i), the Plan must specify the activities which the Grantee will fund under this paragraph.

(d)(1) States must spend a preponderance of the remaining funds under paragraph (a) of this section for services which they provide pursuant to paragraph (a)(1) of this section. They should spend a minimum amount on activities authorized under paragraphs (a)(2) and (a)(3).

(2) Except as provided in paragraph (d)(3) of this section, to meet the requirements of paragraph (d)(1) of this section:

(i) At least 90 percent of the funds reserved for assistance under this section must be expended for services pursuant to paragraph (a)(1) of this section, and

(ii) Not more than 10 percent of the funds may be expended for activities as described in paragraphs (a)(2) and (a)(3) of this section.

(3) Upon petition to the Department in its annual Application, a Grantee may expend an additional five percent of the funds reserved for assistance under this section for activities as described in paragraphs (a)(2) and (a)(3) of this section if, in the application required pursuant to § 98.13, the Grantee demonstrates that the expenditures for operation of the certificate program and related consumer education, as required in this part, equal or exceed 10 percent of the funds available under this section.

§ 98.51 Activities to improve the quality of child care and to increase the availability of early childhood development programs and before- and after-school care services.

(a) The Grantee shall reserve 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in this section.

(b) Each Grantee receiving funds to operate a program under this part shall use not less than:

(1) 18.75 percent of the total amount of a fiscal year's Block Grant funds to establish or expand and conduct, through the provision of grants or contracts:

(i) Early childhood development programs, operated in accordance with the provisions of paragraph (d) of this section;

(ii) Before- and after-school child care programs, operated in accordance with the provisions of paragraph (e) of this section; or

(iii) Both; and

(2) Five percent of the total amount of a fiscal year's Block Grant funds on one or more of the following activities to improve the quality of care:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and Tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and Tribal requirements pursuant to §§ 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs; and

(v) Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part.

An additional one and one-quarter percent of the total funds received under the Block Grant may be used at the discretion of the Grantee for any of the purposes allowed in paragraph (b)(1) or (b)(2) of this section.

(c) For programs described in paragraph (b)(1) of this section, Grantees must:

(1) Provide funding through grants and contracts; and

(2)(i) Give highest priority to geographic areas within the area served by the Grantee that are eligible to receive grants under Section 1006 of the

Elementary and Secondary Education Act of 1965; and

(ii) Then give priority to any other areas with concentrations of poverty, and any areas with very high or very low population densities.

(d) Early childhood development programs funded under this section:

(1) Must consist of services that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children; and

(2) Are not intended to serve as a substitute for compulsory academic programs.

(e) Before- and after-school programs funded under this section:

(1) Must be provided Monday through Friday, including school holidays and vacation periods other than legal public holidays, to children attending early childhood development programs, kindergarten, or elementary or secondary school classes during such times of the day and on such days that the regular instructional services are not in session; and

(2) Are not intended to extend or replace the regular academic program.

(f) Administrative costs associated with activities funded under paragraphs (a), (b)(1), and (b)(2) of this section are to be included with amounts expended for program activities in determining whether Grantees have met the requirements of those respective paragraphs.

(g) Pursuant to § 98.16(a)(8)(i), the Plan must specify the activities which the Grantee will fund under this section.

§ 98.52 Administrative activities.

(a) Block Grant funds may be used for administrative activities, as limited by § 98.50(d).

(b) As part of its Application, as provided in § 98.13(a)(6), a Grantee must provide an estimate of total funds that will be used for administrative activities by both the Grantee and subgrantees during the program period. A list of all administrative activities on which the estimate is based must also be provided with the estimate. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the lead agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation includes the following types of activities:

(i) Determining eligibility for child care services;

(ii) Planning, developing, and designing the Block Grant program;

(iii) Establishing and operating a certificate program;

(iv) Providing local officials and citizens with information about the program, including the conduct of public hearings;

(v) Preparing the Grantee's Application and Plan;

(vi) Developing systems, including automated information management systems;

(vii) Developing agreements with administering agencies in order to carry out program activities;

(viii) Monitoring program activities for compliance with program requirements;

(ix) Preparing reports and other documents related to the program for submission to the Secretary;

(x) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(xi) Coordinating the provision of Block Grant services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care programs;

(xii) Coordinating the resolution of audit and monitoring findings;

(xiii) Evaluating program results; and

(xiv) Managing or supervising persons with responsibilities described in paragraphs (b)(1) (i) through (xiii) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by Grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.55.

(c) Expenditures on any administrative activities related to the services under § 98.50 are subject to the requirements and limitation under paragraph (d) of § 98.50, and together with expenditures for quality and availability, must not exceed the limitation under § 98.50(d)(2), except as provided under § 98.50(d)(3).

§ 98.53 Supplementation.

(a) Grantees must provide assurances that funds received under the Block Grant will be used only to supplement, not supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs.

(b) The Grantee must determine separate total amounts of Federal, State, and local funds expended for such services during an initial base period (as defined in paragraph (b)(1) of this section) and during subsequent periods for child care services and related programs. The Grantee must assure that the amounts of funding for such services from these other sources for each subsequent period are maintained at least at the levels of effort established for the base period.

(1) The base period will be a twelve-month period (e.g., the State fiscal year), which includes the month one year prior to the first month for which the initial Application for Block Grant funds is made. Subsequent periods are each twelve-month period following the preceding period. Grantees may establish base periods and associated levels of effort on:

- (i) A level of government basis (e.g., Federal, State and local);
- (ii) A program-by-program basis; or
- (iii) An alternative basis that provides for fiscal accountability.

(2) Should a Grantee choose to establish base-period levels of effort on a basis other than a level of government basis, that basis will be reflected in the Plan, pursuant to § 98.16(a)(16).

(3) For purposes of this section, child care services and related programs are those services and programs which are included by the Grantee for funding under its Block Grant Plan.

(4) Amounts established for the base period will be included in the initial Application, or first subsequent Application pursuant to § 98.13(a)(8)(i); amounts expended for subsequent periods will be included in subsequent Applications, pursuant to § 98.13(a)(8)(ii).

(5) Grantees must amend the amounts determined in paragraph (b) of this section, when necessary, to reflect more accurate data or program changes.

(6) Reductions in Federal funding for programs included in the base period computation will be taken into consideration in determining whether a Grantee has met this requirement. For Tribal Grantees, reductions in State funding will be similarly considered. Information regarding the nature, extent, and basis for the reduction must be included in the Grantee's Application, pursuant to § 98.13(a)(8)(iii).

§ 98.54 Restrictions on the use of funds.

(a) *General.* (1) Block Grant funds may not be expended for any activity not authorized in these regulations, or which does not meet the additional restrictions and limitations in

paragraphs (b) through (d) of this section.

(2) Funds must be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) *Construction.* (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services which supplant or duplicate the academic program of any public or private school.

(d) *Sectarian Purposes and Activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to § 98.2(j), assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) Block Grant funds may not be used as the non-Federal share for other Federal grant programs.

§ 98.55 Cost allocation.

(a) Grantees and subgrantees must keep on file cost allocation plans or indirect cost agreements, as appropriate, which have been amended to include costs allocated to the Block Grant.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

(c) Approval of the cost allocation plans or indirect cost agreements is not

specifically required by these regulations, but these plans and agreements are subject to review.

Subpart G—Financial Management

§ 98.60 Availability of funds.

(a) In accordance with the apportionment of funds from the Office of Management and Budget, and subject to the availability of appropriations, the Secretary:

(1) May withhold no more than one-quarter of one percent of the funds made available for a fiscal year for the provision of technical assistance; and

(2) Will award the remaining Block Grant funds to Grantees that have an approved Application and Plan.

(b) The Block Grant program does not require State or local match.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d)(1) State and Territorial Grantees must obligate their allotments in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year must be liquidated within one year. Except for paragraph (d)(2) of this section, determination of whether funds have been obligated and liquidated will be based on:

- (i) State or local law; or
- (ii) If there is no applicable State or local law, the regulation at 45 CFR 92.3, Obligations and Outlays (expenditures).

(2) Obligations may include subgrants or contracts which require the payment of funds from the Grantee to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

- (i) A local office of the lead agency;
- (ii) Another entity at the same level of government as the lead agency; or
- (iii) A local office of another entity at the same level of government as the lead agency.

(3) For purposes of the Block Grant, funds for child care services provided through a child care certificate will be considered obligated when a Grantee or subgrantee issues to a family in writing a child care certificate that indicates:

- (i) The amount of funds that will be paid to a child care provider or family, and
- (ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but must be no

later than the end of the liquidation period.

(4) Any funds not obligated during the obligation period specified in paragraph (d)(1) of this section will revert to the Federal government. Any funds not liquidated by the end of the liquidation period specified in paragraph (d)(1) of this section will also revert to the Federal government.

(e) Tribal Grantees are not subject to the requirements in paragraph (d) of this section. Such Grantees must obligate and liquidate their allotments by the end of the second fiscal year following the fiscal year for which the grant is awarded. Any funds that remain unliquidated by the end of such period will revert to the Federal government.

(f) Cash advances to Grantees or by Grantees to subgrantees or contractors shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the Grantee, subgrantee, or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g)(1) Block Grant funds are available for use by the Grantee only after the funds are made available by Congress for Federal obligation unless:

(i) Costs are incurred for planning activities related to the submission of an initial Block Grant Application and Plan and

(ii) The planning activities occur after November 5, 1990.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (g)(1) of this section is subject to the actual availability of the appropriation.

(h) Funds that are returned to Grantees and subgrantees (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care where the Grantee or subgrantee has made a full payment to the child care provider) shall:

(1) If received by the Grantee or subgrantee during the obligation period specified in paragraph (d)(1) of this section, be used for activities specified in the Grantee's approved Plan and must be obligated by the end of the obligation period; or

(2) If received by the Grantee or subgrantee during the liquidation period specified in paragraph (d)(1) of this section:

(i) Be used for activities specified in the Grantee's approved Plan if State or local laws or procedures permit such use. These funds must be expended by the end of the liquidation period; or

(ii) If State or local laws or procedures do not permit such use, be returned to the Federal government; or

(3) If received by the Grantee or subgrantee after the liquidation period specified in paragraph (d)(1) of this section:

(i) Be used for activities specified in the Grantee's approved Plan if State or local laws or procedures permit such use; or

(ii) If State or local laws or procedures do not permit such use, be returned to the Federal government; or

(i) Repayment of loans made by Grantees and subgrantees, pursuant to § 98.51(b)(2)(ii), may be made in cash or in services provided in-kind. Payment provided in-kind must be based on fair market value. All loans must be fully repaid.

(j) Grantees must recover child care payments which are the result of fraud. These payments must be recovered from the part(ies) responsible for committing the fraud.

§ 98.61 Allotments for States.

(a) An amount equal to the funds appropriated for the Block Grant, less amounts reserved for technical assistance and amounts reserved for the Territories and Tribes, pursuant to §§ 98.60(a) and 98.62 (a) and (b), shall be allotted to States. For purposes of this section and § 98.63, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) Funds will be allotted to States based upon the formula specified in section 6580(b) of the Act.

§ 98.62 Allotments for Territories and Tribes.

(a) An amount up to one-half of one percent of the amount appropriated for the Block Grant shall be reserved for the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau).

(1) Funds shall be allotted to Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(1) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for

which satisfactory data are available at the time such determination is made; and

(2) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (a)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (a)(1)(ii) of this section:

(1) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(2) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2) The formula used in calculating a Territory's allotment is as follows:

(i)

$$\frac{YCF_i \times APF_i}{\sum (YCF_i \times APF_i)} \times \text{amount reserved for Territories at paragraph (a) of this section.}$$

(ii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term "YCF," means the Territory's Young Child factor as defined at paragraph (a)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term "APF," means the Territory's Allotment Proportion factor as defined at paragraph (a)(1)(ii) of this section.

(b) An amount up to three percent of the amount appropriated for the Block Grant shall be reserved for Indian Tribes and Tribal organizations.

(1) Except as specified in paragraph (b)(2) of this section, grants to individual Tribal Grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (b)(1)(i) of this section, by the number of all Indian children living on or near Tribal reservations or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children which apply as part of a consortium, pursuant to § 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (b)(1)(i) of this

section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (b)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(c) All funds reserved for Territorial Grantees at paragraph (a) of this section will be allotted to Territorial Grantees, and all funds reserved for Tribal Grantees at paragraph (b) of this section will be allotted to Tribal Grantees. Any such funds that are returned after they have been allotted will revert to the Federal government.

§ 98.63 Reallotment.

(a) Any portion of a State's allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other State Grantees in proportion to the original allotments. For purposes of this section and § 98.61, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Reallotment does not apply to Territorial or Tribal allotments, and Territorial and Tribal Grantees may not receive reallotted State funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant which it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report must be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot Block Grant funds.

(i) If the total amount available for reallotment is \$25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to § 98.61(b).

(ii) If the amount available for reallotment is less than \$25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment award to a State is less than \$500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(iv) If a State does not accept its share of the reallotted funds, those funds will be returned to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that State does not have any funds available for reallotment; or

(ii) In the case of a report received after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(b) States receiving reallotted funds must obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

§ 98.64 Financial reporting.

(a) Beginning 90 days after the end of fiscal year 1992, and within 90 days after the end of each succeeding fiscal year, all Grantees must submit to the Secretary a Standard Form 269 or 269A, Financial Status Report, to report the status of each fiscal year's grant. Final reports for a fiscal year will be due after the end of the program period.

(b) The Secretary reserves the right to require financial reports less frequently than specified in paragraph (a) of this section.

(c) If a Grantee or subgrantee earns program income (e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care, pursuant to § 98.42(a)), this income must be reported.

(d) Funds returned to a Grantee or subgrantee, pursuant to § 98.60(h), shall be reported as follows:

(1) If the funds are returned before the close of the period covered by the financial report, they should be included as a net adjustment to total expenditures in the report; or

(2) If the funds are returned after submission of the final financial report, they should be reported on a revised report for the same period and be included as a net adjustment to total expenditures.

§ 98.65 Audits.

(a) Each Grantee must have an audit conducted after the close of each program period in accordance with OMB Circular A-128.

(b) Grantees are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Grantees must submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Grantees must also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in

accordance with these statutory or regulatory provisions, or with the Plan, and which are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other Block Grant funds to which the Grantee is or may be entitled.

(e) Grantees must provide access to appropriate books, documents, papers and records to allow the Secretary to verify that Block Grant funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

§ 98.66 Disallowance procedures.

(a) Any expenditures not made in accordance with the Act, the implementing regulations, or the Grantee's approved Plan, will be subject to disallowance.

(b) If the Department, as the result of an audit or a review, finds that expenditures by a Grantee should be disallowed, the Department will notify the Grantee of this decision in writing.

(c)(1) If the Grantee agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Grantee shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Grantee may appeal the finding:

(i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

(ii) By following the procedure in paragraph (d) of this section.

(d) A Grantee may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(e) The Grantee may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A Grantee may not appeal the determination of award amounts or disposition of unobligated balances.

(f) The Grantee's request for reconsideration in paragraph (c)(2)(i) of this section must be postmarked no later than 30 days after the receipt of the disallowance notice. A Grantee may request an extension within the 30-day timeframe. The request for reconsideration, pursuant to paragraph (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Grantee's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.

(g)(1) Upon receipt of a request for reconsideration, pursuant to paragraph (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Grantee that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Grantee and any other necessary materials.

(3) If the reconsideration decision is adverse to the Grantee's position, the response will include a notification of the Grantee's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.

(h) If a Grantee refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Grantee.

(i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to § 98.91(b), the findings of which have been appealed by the Grantee.

(j) Disallowances under the Block Grant program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

§ 98.67 Fiscal requirements.

(a) Grantees must expend and account for Block Grant funds in accordance with their own laws and procedures for expending and accounting for their own funds.

(b) Unless otherwise specified in this part, contracts which entail the expenditure of Block Grant funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures must be sufficient to permit:

- (1) preparation of reports required under § 98.64 and under subpart H; and
- (2) the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

Subpart H—Program Reporting Requirements

§ 98.70 Annual report requirement.

(a) Grantees that receive assistance under the Block Grant shall prepare and submit to the Secretary an annual report. The report will be submitted in the manner specified by the Secretary by December 31 and will cover the most recent program period which ended on September 30 of that year.

(b) The first such report shall be an interim report, covering expenditures

through September 30, 1992, and shall be submitted no later than December 31, 1992.

(c) Annual reports to the Secretary shall include the information listed in § 98.71.

§ 98.71 Content of report.

At a minimum, a Grantee's report to the Secretary, as required in § 98.70, shall:

(a) Specify the uses for which the Grantee expended funds under §§ 98.50 through 98.52 and the amount of funds expended for such uses, pursuant to § 98.13(a)(6); and

(b) To the extent data are reasonably available, contain available data on the manner in which the child care needs of families in the area served by the Grantee are being fulfilled, including information concerning:

(1) The number of children being assisted with funds provided under the Block Grant, and under other Federal child care and pre-school programs;

(2) The type and number of child care programs, child care providers, caregivers, and support personnel located in the area served by the Grantee;

(3) Salaries and other compensation paid to full- and part-time staff who provide child care services; and

(4) Activities to encourage public-private partnerships that promote business involvement in meeting child care needs;

(c) Describe the extent to which the affordability and availability of child care services has increased;

(d) If applicable, describe, in either the first or second annual report, the findings of the Grantee's review of its licensing and regulatory requirements and policies, pursuant to § 98.41(d), including a description of actions taken by the Grantee in response to such reviews;

(e) Contain, if applicable, an explanation of any Grantee action which reduces the level of child care standards, as required in § 98.41(c);

(f) Describe the standards and health and safety requirements applicable to child care providers in the State or other area served by the Grantee, including a description of Grantee efforts to improve the quality of child care; and

(g) Any additional information that the Secretary shall require.

Subpart I—Indian Tribes

§ 98.80 General procedures and requirements.

An Indian Tribe or Tribal organization (as defined at §§ 98.2(u) and 98.2(o)) may be awarded grants to plan and

carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving Block Grant funds shall be subject to all the requirements under this part, unless otherwise indicated.

(b) An Indian Tribe applying for or receiving Block Grant funds must:

(1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a Block Grant program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium which receives Block Grant funds; and

(2) Demonstrate that it has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive Block Grant funds on behalf of a particular Tribe if:

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive Block Grant funds on behalf of each Tribe or Tribal organization in the consortium; and

(2) The consortium consists of Tribes which each meet the eligibility requirements for the Block Grant program as defined in this part, or which would otherwise meet the eligibility requirements if the Tribe or Tribal organization had at least 50 children under 13 years of age; and

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds properly, manage a Block Grant program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive Block Grant services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the Block Grant, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, will include Indian children living on or near reservations, with the exception of

Tribes in Alaska, California and Oklahoma.

(f) In determining eligibility for services pursuant to § 98.50(a)(1), a Tribal program may use either:

- (1) 75 percent of the State median income for a family of the same size; or
- (2) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee.

§ 98.81 Application and plan.

(a) In order to receive Block Grant funds, Indian Tribes (as defined at § 98.2(u)) must submit an Application (as defined at § 98.13) which provides that:

(1) The applicant will coordinate, to the maximum extent feasible, with the lead agency(ies) in the State(s) in which the applicant will carry out Block Grant programs or activities; and

(2) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, Block Grant programs and activities will be carried out on an Indian reservation for the benefit of Indian children.

(b) The initial Application under paragraph (a) of this section must include a Plan which meets the provisions of this part and shall be for a two-year period, pursuant to § 98.17(b).

§ 98.82 Coordination.

Tribal applicants will coordinate:

(a) To the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out the Block Grant program; and

(b) With other Federal, State, local, and Tribal child care and childhood development programs.

§ 98.83 Requirements for tribal programs.

(a) The Grantee must designate an agency, department, or unit to act as the lead agency to administer the Block Grant program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities must be carried out on an Indian reservation for the benefit of Indian children.

(c) In the case of a Tribal Grantee which is a consortium, variations in Block Grant programs or requirements and in child care licensing, regulatory and health and safety requirements must be specified in written agreements between the consortium and the Tribe.

(d) Tribal Grantees shall not be subject to the requirements at §§ 98.44(a) and 98.51(c)(2).

(e) The base amount of any Tribal grant is not subject to the expenditure requirements at § 98.50(a), the requirement to reserve funds under § 98.51(a), or the percentage requirement

for child care services at paragraph (g) of this section. The base amount may be expended for any costs consistent with the purposes and requirements of the Block Grant.

(f) Tribal Grantees whose total allotment pursuant to § 98.62(b) is less than an amount established by the Secretary which approximates the least amount which could be allotted to any individual State or Territory pursuant to §§ 98.61(a) and 98.62(a) shall not be subject to the following requirements:

- (1) The assurance at § 98.15(b);
- (2) The requirement for certificates at § 98.30(a) and § 98.30(e);
- (3) The requirements for allocation of funds at § 98.50 (a) and (d); and
- (4) The requirements for allocation of funds at § 98.51 (a) and (b).

(g) Tribal Grantees described in paragraph (f) of this section must reserve at least 63.75 percent of that portion of their total per-child amount, as allotted pursuant to § 98.62(b)(1)(ii) for Tribes or § 98.62(b)(2)(ii) for consortia, for direct child care services as defined at § 98.2(l). The services are to be provided to:

- (1) Eligible children, as described in § 98.20; and
- (2) Using a sliding fee scale, as described in § 98.42.

(h) Tribal Grantees described in paragraph (f) of this section may use the remaining 36.25 percent of that portion of their total per-child amount as allotted pursuant to § 98.62(b)(1)(ii) for Tribes or § 98.62(b)(2)(ii) for consortia, for child care services or for activities to improve the availability and quality of child care and for administrative costs. Such services, activities and costs must be consistent with the purposes and requirements of the Block Grant.

(i) Administrative costs associated with child care services funded under paragraph (g) of this section must be included as costs under paragraph (h) of this section or as costs under the base amount.

Subpart J—Monitoring, Non-compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the Block Grant for compliance with:

- (1) The Act;
- (2) The provisions of this part; and
- (3) The provisions and requirements set forth in the Block Grant Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Grantee, or an entity providing services under contract or agreement with the Grantee, has failed to substantially comply with the Plan or

with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Grantee of possible non-compliance. The Secretary shall consider comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Grantee shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d) (1) Grantees and subgrantees must retain all Block Grant records, as specified in paragraph (c) of this section, and any other records of Grantees and subgrantees which are needed to substantiate compliance with Block Grant requirements, for the period of time specified in paragraph (e) of this section.

(2) Grantees and subgrantees must provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.

(e) *Length of retention period.* (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section must be retained for three years from the day the Grantee or subgrantee submits to the Secretary its final Financial Status Report (Standard Form 269 or 269A) for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Grantee, pursuant to §§ 98.90 or 98.93, a final determination is made that:

- (1) There has been a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.18; or

(2) If in the operation of any program for which funding is provided under the Block Grant, there is a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Grantee a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Grantee, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

§ 98.92 Penalties and sanctions.

(a) Upon a final determination that the Grantee has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) No further payments under the Block Grant will be made to such Grantee; or,

(2) In the case of noncompliance in the operation of a program or activity, no further payments to the Grantee will be made with respect to such program or activity.

(b) The penalty provided under paragraph (a) of this section will continue until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

(c) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by the Act or the implementing regulations and disqualification of the Grantee from the receipt of further funding under the Block Grant.

(d) If a Grantee is subject to additional sanctions as provided under paragraph (c) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(e) Nothing in this section, or in §§ 98.90 or 98.91, will preclude the Grantee and the Department from informally resolving a possible

compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (c) of this section, may nevertheless be applied, even though the issue is resolved informally.

§ 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Grantee has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the Block Grant must be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. The complaint must identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Grantee. Any comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints which are not satisfactorily resolved through communication with the Grantee will be pursued through the process described in § 98.90.

PART 99—PROCEDURE FOR HEARINGS FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

Subpart A—General

Sec.

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- 99.31 Posthearing briefs.
- 99.32 Decisions following hearing.
- 99.33 Effective date of Assistant Secretary's decision.

Authority: 42 U.S.C. 9858.

Subpart A—General

§ 99.1 Scope of rules.

(a) The rules of procedure in this section govern the practice for hearings afforded by the Department to Grantees pursuant to §§ 98.18(c) or 98.91, and the practice relating to the decisions of such hearings.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the Grantee, whether before, during, or after the hearing, to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing and are not governed by the rules in this part, except as expressly provided herein.

§ 99.2 Presiding officer.

(a) (1) The presiding officer at a hearing shall be the Assistant Secretary or the Assistant Secretary's designee.

(2) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

(b) The presiding officer, for all hearings, shall be bound by all applicable laws and regulations.

§ 99.3 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Assistant Secretary. Inquiries may be made at the Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

§ 99.4 Suspension of rules.

With notice to all parties, the Assistant Secretary for Children and Families or the presiding officer, with respect to pending matters, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 99.5 Filing and service of papers.

(a) An original and two copies of all papers in the proceedings shall be filed with the presiding officer. For exhibits and transcripts of testimony, only the originals need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by certified mail. Service on the party's designated attorney will be deemed service on the party.

Subpart B—Preliminary Matters—Notice and Parties**§ 99.11 Notice of hearing or opportunity for hearing.**

Proceedings commence when the Assistant Secretary mails a notice of hearing or opportunity for hearing to the Grantee. The notice shall state the time and place for the hearing, and the issues which will be considered. A copy of the notice shall be published in the *Federal Register*.

§ 99.12 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 90 days after the date of the notice of the hearing furnished to the applicant or Grantee, unless otherwise agreed to, in writing, by the parties.

§ 99.13 Place.

The hearing shall be held in the city in which the regional office of the Department responsible for oversight of the Grantee is located or in such other place as the Assistant Secretary determines, considering both the circumstances of the case and the convenience and necessity of the parties or their representatives.

§ 99.14 Issues at hearing.

(a) The Assistant Secretary may, prior to a hearing under § 98.91 of this part, notify the Grantee in writing of additional issues which will be considered at the hearing. Such notice shall be published in the *Federal Register*. If such notice is received by the Grantee less than 20 days before the date of the hearing, a postponement of the hearing shall be granted at the request of the Grantee or any other party. The hearing shall be held on a date 20 days after such notice was

received, or on such later date as agreed to by the Assistant Secretary.

(b) If, as a result of negotiations between the Department and the Grantee, the submittal of a Plan amendment, a change in the Grantee program, or other action by the Grantee, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Assistant Secretary, the hearing shall proceed on such new or modified issues. A notice of such new or modified issues shall be published in the *Federal Register*. If such notice is received by the Grantee less than 20 days before the date of the hearing, a postponement of the hearing shall be granted at the request of the Grantee or any other party. The hearing shall be held on a date 20 days after such notice was received, or on such later date as agreed to by the Assistant Secretary.

(c) (1) If, at any time, the Assistant Secretary finds that the Grantee has come into compliance with Federal statutes and regulations on any issue, in whole or in part, the Assistant Secretary shall remove such issue from the proceedings, in whole or in part, as may be appropriate. If all issues are removed, the Assistant Secretary shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, in whole or in part, the Assistant Secretary shall provide all parties other than the Department and the Grantee (see § 99.15(b)) with written notice of the intention, and the reasons for it. Such notice shall include a copy of the proposed Block Grant Plan provision on which the Grantee and Assistant Secretary have settled. The parties shall have 15 days from the receipt of such notice to file their views or any information on the merits of the proposed Plan provision and the merits of the Assistant Secretary's reasons for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the Grantee is notified, as provided in paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section; they shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 99.15 Request to participate in hearing.

(a) The Department and the Grantee are parties to the hearing without making a specific request to participate.

(b) (1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have directly caused them injury and their interest is immediately within the zone of interests to be protected by the

governing Federal statute and regulations.

(2) Any individual or group wishing to participate as a party shall file a petition with the presiding officer within 15 days after notice of the hearing has been published in the *Federal Register* and shall serve a copy on each party of record at that time, in accordance with § 99.5(b). Such petition shall concisely state:

- (i) Petitioner's interest in the proceeding;
- (ii) Who will appear for petitioner;
- (iii) The issues on which petitioner wishes to participate; and
- (iv) Whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments on it.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, at the presiding officer's discretion, the presiding officer may request that all such petitioners designate a single representative or may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on the petition, and if the petition is denied, the presiding officer shall briefly state the grounds for denial. If the petition is denied, the presiding officer may recognize the petitioner as an *amicus curiae*.

(c) (1) Any interested person or organization wishing to participate as an *amicus curiae* shall file a petition with the presiding officer before the commencement of the hearing. Such petition shall concisely state:

- (i) The petitioner's interest in the hearing;
- (ii) Who will represent the petitioner; and
- (iii) The issues on which petitioner intends to present argument.

An *amicus curiae* is not a party but may participate as provided in this paragraph.

(2) The presiding officer may grant the petition upon finding that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and it may contribute materially to the proper disposition of the issues.

(3) An *amicus curiae* may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. The *amicus curiae*

may submit a written statement of position to the presiding officer prior to the beginning of a hearing and shall serve a copy on each party. The *amicus curiae* may also submit a brief or written statement at such time as the parties submit briefs and shall serve a copy on each party.

Subpart C—Hearing Procedures

§ 99.21 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. The presiding officer shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This authority includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Regulate participation of parties and *amici curiae* and require parties and *amici curiae* to state their position with respect to the various issues in the proceeding;

(4) Administer oaths and affirmations;

(5) Rule on all pending motions and other procedural items including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude or limit evidence or discovery;

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending;

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is not the Assistant Secretary, certify the entire record including the recommended findings and proposed decision to the Assistant Secretary; and

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551 through 559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

§ 99.22 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer;

(c) Agree to stipulations as to facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing; and

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 99.23 Discovery.

The Department, the Grantee, and any individuals or groups recognized as parties shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26–37 of the Federal Rules of Civil Procedure shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may, at the presiding officer's discretion, issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.

§ 99.24 Evidentiary purpose.

The purpose of the hearing is to receive factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what the party intends to prove, may be made at hearings.

§ 99.25 Evidence.

(a) Testimony. Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) Stipulations and exhibits. Two or more parties may agree to stipulations

of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) Rules of evidence. Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 99.26 Un-sponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters at issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 99.27 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 99.28 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 99.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs, which may

contain proposed findings of fact and conclusions of law. The presiding officer shall also fix the time for reply briefs, if permitted.

§ 99.32 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, the Assistant Secretary shall issue the decision within 60 days after the time for submission of posthearing briefs has expired.

(b) (1) If the presiding officer is not the Assistant Secretary, the presiding officer shall certify the entire record, including the recommended findings and proposed decision, to the Assistant Secretary within 60 days after the time for submission of posthearing briefs has expired. The Assistant Secretary shall

serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days of receipt of the recommended findings and proposed decision, file exceptions and a supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary shall thereupon review the recommended decision and, within 45 days after the receipt of the exceptions to the recommended findings and proposed decision, issue the decision.

(c) The decision of the Assistant Secretary under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704. The

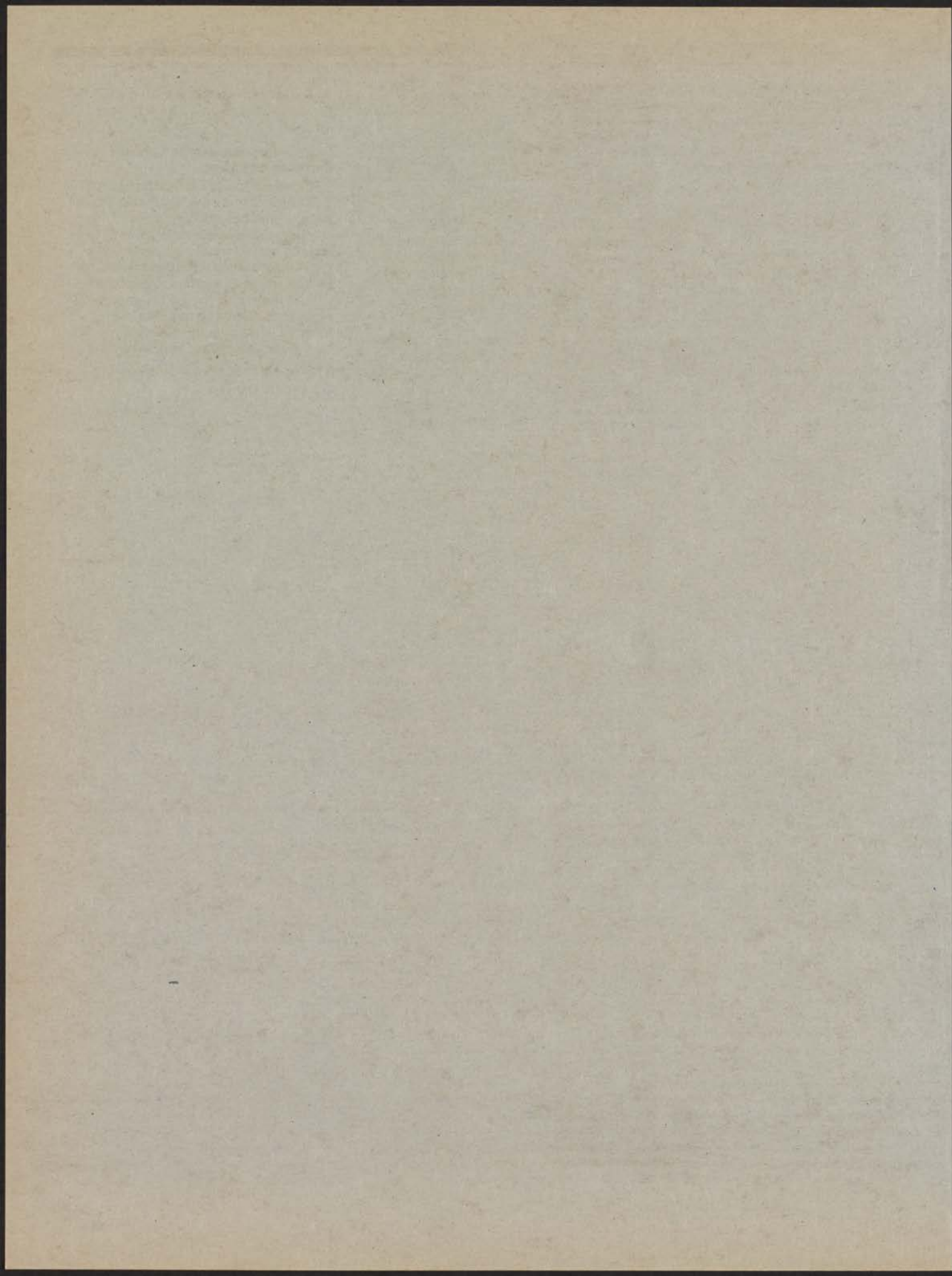
Assistant Secretary's decision shall be promptly served on all parties, and amici, if any.

§ 99.33 Effective date of Assistant Secretary's decision.

If, in the case of a hearing pursuant to § 98.18(b) of this chapter, the Assistant Secretary concludes that a Plan amendment does not comply with the Federal statutes and regulations, the decision that further payments will not be made to the Grantee, or payments will be limited to categories under other parts of the Block Grant Plan not affected, shall specify the effective date for the withholding of Federal funds.

[FR Doc. 92-17750 Filed 8-3-92; 8:45 am]

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Federal Register

**Tuesday
August 4, 1992**

Part III

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 255 and 257

**Aid to Families With Dependent Children
At-Risk Care Program; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 255 and 257

RIN 0970-AA90

Aid to Families With Dependent Children At-Risk Child Care Program

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 5081 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), which adds section 402(i) to the Social Security Act (the Act) to create a child care program for low-income, working families who are not receiving Aid to Families with Dependent Children (AFDC).

This optional program permits States to provide child care to low-income families who are not receiving AFDC, need child care in order to work, and would otherwise be at risk of becoming eligible for AFDC.

These regulations also amend § 255.4(c) to clarify the definition of applicable standards of State and local law for the purpose of child care provided under section 402(g) of the Act (including Transitional Child Care).

EFFECTIVE DATE: August 4, 1992.

FOR FURTHER INFORMATION CONTACT:

Mary Ann Higgins, Administration for Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401-9294.

SUPPLEMENTARY INFORMATION:

Background

The Administration for Children and Families administers a number of programs that address the child care needs of low-income families. In the past three years, the scope of ACF-administered child care programs has broadened to address the child care needs of increasingly larger segments of the population. ACF's programs reflect a growing awareness of the needs of, and commitment to, the family.

Child care needs were first addressed for working families who receive AFDC benefits. A portion of the child care expenses was deducted from the family's earnings when calculating the amount of the family's AFDC grant. Later, the Family Support Act of 1988 guaranteed necessary child care for working AFDC recipients and for AFDC recipients in approved education or training activities (including the Job Opportunities and Basic Skills Training (JOBS) Program). In addition to

recognizing the need for child care during training activities to obtain employment, the Family Support Act of 1988 addressed the need for child care during a 12-month transition period following the end of eligibility for AFDC. These child care measures were primarily designed for families already dependent on welfare.

In OBRA 90, Congress established two new child care programs: child care for low-income working families in need of such care and otherwise at risk of becoming eligible for AFDC (the At-Risk Child Care program) and the Child Care and Development Block Grant. Congress also amended the Earned Income Credit to assist the working poor in caring for their children.

At-Risk Child Care

In enacting the At-Risk Child Care program, Congress recognized that providing child care to low-income working families could enable such families to avoid welfare dependency. A State can also use the At-Risk Child Care program for former AFDC families whose eligibility for Transitional Child Care (TCC) under the Family Support Act ends but who continue to need assistance with child care. States can also use the program for some categories of needy families who are not eligible for TCC. States can provide care directly, by use of purchase of service contracts or vouchers, by providing cash or vouchers directly to the family, by reimbursing the family, or using other arrangements that the State agency deems appropriate.

The President signed OBRA 90 into law on November 5, 1990. However, the provisions regarding the At-Risk Child Care program were effective October 1, 1990. The Family Support Administration, predecessor of ACF, issued guidance (Action Transmittal CC-FSA-AT-90-1 dated December 19, 1990) to States on how to apply to operate an At-Risk Child Care program prior to the issuance of final regulations. We published a Notice of Proposed Rulemaking (NPRM) on June 25, 1991. The FY 1992 Appropriations bill for the Department provided \$300 million for this program. We have approved a total of 47 States for the At-Risk Child Care program.

Child Care and Development Block Grant

The other child care program authorized by OBRA 90, the Child Care and Development Block Grant (CCDBG), is intended to provide child care services for low-income families and to increase the availability, affordability, and quality of child care and

development services. A total of \$2.5 billion is authorized for CCDBG for fiscal years 1991-1993, and such sums as may be necessary for fiscal years 1994 and 1995. Funding for FY 1992 in the amount of \$825 million becomes available as of September 30, 1992.

Earned Income Credit

Although ACF does not administer the Earned Income Credit (EIC) program, it is an additional program to assist the working poor achieve family self-sufficiency. Congress created it in 1975 and greatly expanded it in OBRA 90. The EIC is a refundable tax credit provided to a low-income family with children in which a parent works. For example, in 1991, a family was eligible if its income was below \$20,264, an amount that is indexed to inflation each year. Even a family earning too little to pay taxes receives the credit if it files a federal income tax return. The EIC can serve as an important resource for a family that receives public assistance while working at a low-wage job. Changes to the EIC enacted in OBRA 90 guarantee that EIC benefits will not count as income when eligibility and benefit levels are determined for many other federally supported programs.

The EIC can help a family make the transition from welfare to work by increasing its work-related income. A family can also receive EIC throughout the year in their regular paychecks by filing a W-5 form with their employer. In this way, families can use the money to meet ongoing needs of their children. For a family who has worked its way off welfare, the EIC can make the family's take-home pay compare more favorably with the welfare check it once received.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

- Has an annual effect on the national economy of \$100 million or more;
- Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or
- Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect the increased expenditures authorized for the At-Risk Child Care program to have an annual effect on the

national economy of over \$100 million in the first five years of operation. We based the calculations for expenditures under the Act on the anticipation of increased expenditures in child care services.

According to the Office of Management and Budget instructions for preparation of Regulatory Analyses (found in appendix V of the annual Regulatory Program), "expenditure rules" establishing terms or conditions of financial assistance programs should ordinarily only "verify that the terms or conditions are the minimum necessary to achieve the purposes for which the funds were appropriated. They should not contain conditions in pursuit of goals that are not germane to the purpose for which the funds were authorized and appropriated * * *". Maximum discretion should be allowed in the use of Federal funds, particularly when the Grantee is a State or local government." The instructions recognize that most expenditure rules do not create any regulatory burden other than that incident to prudent purchasing and management requirements.

With respect to these management requirements, we believe that we have imposed only the minimum conditions necessary to achieve the statutory purposes and to maintain consistency with existing regulations for child care provided under the Social Security Act. There are no non-germane conditions.

This regulation establishes procedures which allow States to expend the monies authorized by the Act and provides States with a great deal of flexibility and latitude in program design. Regulatory constraints on States' administrative processes are minimal. Consistent with existing regulations for child care provided under the Social Security Act, however, we require States to guarantee parental choice by establishing at least one method by which self-arranged child care can be paid.

The regulation does not significantly restrict States in designing and implementing the At-Risk Child Care program. Rather, our approach is sensitive to the need for flexibility in the design of the program and administrative process. For example, we provide States with a great deal of latitude in defining the low-income and "at risk" eligibility criteria. Similarly, with regard to health and safety and registration requirements, we give States substantial flexibility in providing for any necessary requirements. We establish no minimum standards. Additionally, we do not specify that the program be statewide. We expect substantial variation in State programs.

The regulation in and of itself imposes only minimal additional administrative costs. At the State level, the regulation potentially requires additional administrative effort in only one area—the State must establish at least one method by which self-arranged care can be paid.

We realize that requiring States to establish at least one method by which self-arranged care can be paid may entail some additional costs for some States. The main cost associated with establishing a method for paying for self-arranged care (aside from the entry of new providers into the State's licensing and regulatory system, at least to the extent that they must be registered or meet minimum health and safety standards) is the fact that States must provide payment to providers whom the State would not otherwise pay for child care services. While we do not have a precise estimate of the additional administrative cost associated with this, we expect that the total cost of the requirement will be minimal as States must already have a method for paying for self-arranged care provided under section 402(g) of the Act.

Currently Projected Costs and Benefits

Consistent with the expenditure rules discussed in the Regulatory Impact Analysis Guidance (Appendix V of the 1990 Regulatory Program) and quoted above, a full-blown benefit cost analysis is not appropriate for this rule. We believe that there will be minimal costs associated with this rule and that the benefits will be over and above the appropriated level.

This regulation will result in minimal costs; fewer than 4,300 estimated annual burden hours are associated with the regulation. The regulation may require States to interact with more providers, and in some cases may necessitate that States hire additional staff.

We have no way of quantifying the value of benefits of child care services. The benefits may be higher or lower than the \$300 million appropriated for the program, depending on the value of child care to the recipients.

In assessing the benefits of requiring the State to establish at least one method for paying for self-arranged care (to ensure a family's choice of provider), we refer to the economic concept of "allocative efficiency." To use a mundane example, consider the difference between giving a person five dollars in cash and giving him/her five dollars worth of apples. Most people would prefer the five dollars in cash, because the cash affords more flexibility. Even if someone wants apples, he/she might prefer a different

type of apple, or perhaps prefer an assortment of other fruit or a combination of bread and apples rather than a single option of apples only. Moreover, some people do not like certain varieties of apples, and would therefore value the apples well below the five dollar cost of the product.

This concept of allocative efficiency applies to all goods and services, including child care. In terms of allocative efficiency, a method of paying for the self-arranged care of the parents' choice is of more value to the family (i.e., produces more benefits) than, for example, a contract with a single provider to purchase child care, even when the dollar value of the care is the same.

Moreover, unlike many other goods and services, child care is not a homogenous service but rather a differentiated one. That is, unlike, say, apples, where one unit of Delicious apples is virtually indistinguishable from other units of Delicious apples, child care varies based upon setting, proximity, curriculum, personal relationship, and myriad other factors. Thus, although a child care provider may typically charge, for example, \$100 per week for infant care, that care is not necessarily worth \$100 to everyone with an infant needing child care. For some people, care provided by this particular provider may be worth less than \$100 because the caregiver is inconveniently located, or because the parents' lack of familiarity with the caregiver causes increased family stress and the need for more frequent visits and calls. If this caregiver is the only option, some people who value the care at less than the \$100 cost will take the care despite the fact that they (the parents) do not receive a full \$100 worth of benefits, as they would receive with another more convenient or familiar caregiver. Given the legislative mandate to provide for child care services, ACF has maximized the utility to families by assuring the widest range of provider choices possible.

In providing for at least one method whereby self-arranged care can be paid, families receive what is to them the full dollar value of child care. For example, parents have the choice of using many providers, including ones with which the State might otherwise choose not to contract.

There may be increased administrative costs for States due to the expansion of child care services. These costs will generally be covered by the funds from the At-Risk Child Care program and are minimally increased by the requirement for establishing at least

one method of paying for self-arranged care. We believe that the benefits gained by this requirement will far outweigh any costs associated with it.

National spending on child care was approximately \$24 billion in 1990 and is growing by billions each year. Some of the spending on this program will inevitably displace spending which would have come from other sources. Therefore, the overall economic impact of this program on the child care market will not significantly affect the size of the market. Additionally, there is no evidence that competition, employment, investment, productivity, innovation or the United States' competitiveness will be affected adversely as a result of these regulations.

The nature of the At-Risk Child Care program does raise possible concerns of vertical and horizontal equity. With regard to the program, however, these potential inequities arise only to the extent that they are inherent in non-entitlement programs that have income cut-offs and allow States to establish priorities for services.

Issues of horizontal equity (i.e., the fact that people in similar circumstances will be treated differently) may arise only in response to State priorities. Since At-Risk Child Care is not an entitlement and there is no

"statewideness" requirement, persons in different parts of the State may be treated differently even if their family and income circumstances are identical. Such a difference in practice would not result from the At-Risk policy or regulation, but rather result from the State's administrative decisions to provide services in only certain areas.

Additionally, based upon reviews of initial State applications, it appears that most States will operate "statewide" programs, providing service first to those who apply first. To the extent that States use such practices to ration services, those persons with better access to information will be relatively advantaged. This effect will be ameliorated by the general availability of other subsidized child care programs (e.g., child care funded with title XX, or with other State or local funds, as well as the availability of tax credits).

Vertical inequities will also occur. Due to the nature of the At-Risk Child Care program, indeed, due to the nature of any program with income limits, the potential for a "notch" effect exists; that is, people just above the income cut-off for eligibility receive no benefits at all, while people who are just inside the cut-off may receive some benefit. With regard to the At-Risk Child Care program, however, the fact that services

must be subject to a sliding fee scale minimizes this effect by gradually phasing out the benefit as income increases.

Again, review of initial applications indicates that many States intend to allocate services primarily to priority groups (i.e., families whose eligibility for Transitional Child Care has expired, or families with very low incomes). Thus, the existence of vertical inequities in part reflects successful targeting of resources to those groups most in need.

Paperwork Reduction Act

Certain sections of these regulations contain information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Description of Respondents: State agencies.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
45 CFR 257.21				
Existing.....	xxx	xxx	xxx	xxx
Proposed.....	54	.5	50	1350
45 CFR 257.50				
Existing.....	xxx	xxx	xxx	xxx
Proposed.....	54	1	50	2700
45 CFR 257.66				
Existing.....	xxx	xxx	xxx	xxx
Proposed.....	54	4	1.125	243

Total Existing Burden Hours is xxx.

Total Proposed Burden Hours is 4293.

Total Difference is +4293.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, ACF has submitted a copy of the regulation to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspect of the information collection requirements, including suggestions for reducing the burdens, should direct them to the Administration for Children and Families, Office of Family Assistance (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn:

Laura Oliven, Desk Officer for ACF.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by Public Law 96-354, the Regulatory Flexibility Act, that these regulations will not result in a significant impact on a substantial number of small entities because it primarily affects State governments, which are not "small entities" within the meaning of that Act.

Child care providers such as child care centers, family child care providers, and other providers are considered "small entities" within the context of

Executive Order 12291 and the Regulatory Flexibility Act. Because these regulations provide parents with great authority in their choice of child care providers, and States already have considerable flexibility in determining standards for child care providers, the regulations do not directly impact small entities, either favorably or adversely. Instead, impacts will depend on State decisions.

Therefore, we have concluded, and the Secretary has certified, that a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required. These regulations are issued

under the authority of section 1102 of the Social Security Act.

Federalism and Family Effects

We certify that this action has been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12612 on Federalism

If a policy leads to Federal control over traditional State responsibilities or decreases the ability of States to make policy decisions with respect to its own functions, that policy is determined to have a significant federalism effect.

Section 5081 of OBRA 90 provides States with the option of providing a program of child care for low income working families who are at risk of becoming eligible for AFDC. The final regulations give States broad flexibility in defining who is eligible for the program, in choosing methods of providing care, and in establishing sliding fee scales.

Child care provided under section 402(i) of the Act must meet applicable standards of State and local law. This language is the same as in section 402(g) of the Act which provides child care for AFDC recipients who are working or in approved training or education and former recipients eligible for Transitional Child Care. In these regulations we have modified the policy that was published in the Notice of Proposed Rulemaking (NPRM) on June 25, 1991. We have retained the definition of applicable standards as licensing or regulatory requirements that are generally applicable to care of a particular category regardless of the source of funding for the care. However, the final regulations provide that for child care under title IV-A, a State may deny payment for care that does not meet requirements designed to protect the health and safety of children that are applicable to other Federal or State child care programs. A complete discussion of this provision is contained in the preamble to § 257.41.

This policy does not decrease a State's ability to set standards for child care in general. It does not prevent State from enforcing minimum health and safety requirements. It does not set national standards. The final regulation does limit a State's ability to deny a parent's choice of provider if that provider does not meet standards, other than health and safety requirements, that are only applicable to subsidized care. We do not believe that this overall approach restricts States in designing and implementing At-Risk Child Care programs. While States must meet all

statutory provisions, we fully expect substantial variation in State programs.

Therefore, on balance, we do not believe these regulations have a significant federalism effect.

Analysis Required by Executive Order 12606 on the Family

The At-Risk Child Care Program is expected to have an overall beneficial impact on families. This analysis discusses that impact in terms of the criteria in Executive Order 12606.

(a) The objective of the At-Risk Child Care Program is to provide child care to low-income families who are not currently AFDC recipients, who need care to accept or maintain employment, and who are at risk of becoming AFDC-eligible. The goals of economic independence and prevention of welfare dependency are promoted through continued employment resulting in more secure families.

The At-Risk Child Care program may provide financial aid to both single parent and two-parent families, if such care is necessary for employment. Increasing self-sufficiency will help strengthen families and ameliorate the erosive effects of poverty.

(b) The At-Risk Child Care program provides significant support for parents' authority and right to nurture and supervise their children. The access the program provides to affordable child care settings will enable parents to continue to work to achieve self-sufficiency. Parents will continue to have maximum control and supervision of their children as any working family not receiving benefits would have. Parents choose the child care providers. Non-related providers are subject to State or local requirements for registration, certification, or licensing. However, this will not affect parents' ability to choose the kind of care with which they are most comfortable.

(c) The At-Risk Child Care program does not substitute governmental activity for any of the functions of the family. Parental responsibility for the support of children is fostered by the At-Risk Child Care program because the program assures parental choice of caregivers and the parents' ability to work and provide for the family. Furthermore, the family will contribute to the cost of care based on the family's ability to pay, in accordance with a sliding fee scale formula established by the State IV-A agency. States may waive the contribution from any family at or below the poverty level.

(d) The At-Risk Child Care program is not specifically designed to increase or decrease the family's earnings. However, since child care provided with

At-Risk Child Care funds will permit families to accept or maintain employment, we expect the overall effect will be to increase family earnings by increasing employment opportunities.

(e) The At-Risk Child Care program is available through non-Federal levels of government, i.e., States and localities. The Federal government will not intrude upon family autonomy or decisions.

(f) The At-Risk Child Care program reinforces the notion that the strength of the American family is important to the Nation's economy. Targeting families who would otherwise be at risk of becoming welfare dependent sends the message that assisting families to maintain economic independence is a goal for all levels of government.

(g) The emphasis on self-sufficiency in the At-Risk Child Care program will send a positive message to young people. The message is that those striving to maintain economic independence from welfare can get help from society to do so.

General Analysis of Comments

We received 677 comments on the NPRM. Forty-nine percent of the comments came from one State and commented solely on the proposed definition of applicable standards which all the commenters opposed. Eight percent were from another State and commented solely in support of stricter standards for child care providers. Another eight percent (consisting of individuals or organizations with sectarian affiliations) commented solely in support of the provisions for parental choice in the proposed rule. Of the remaining 229 comments, the breakdown of the nature of the commenters was as follows: unaffiliated individuals (thirty-one percent), child care providers (twenty-one percent), Federal, State, and locally-elected officials (fourteen percent), children's advocates (twelve percent), State, county and local government officials (ten percent), educational institutions (five percent), public and private charities (four percent), and legal associations (three percent).

By far the largest number, 559, commented on applicable standards. Of these, 90 percent opposed the provisions in the NPRM with 28 percent offering suggestions for change.

Twenty-five percent of the respondents commented on registration requirements. Seventy-four percent opposed the provision that registration procedures had to be simple and not include minimum health and safety requirements; seventeen percent proposed amendments. Seventeen

percent of the respondents commented on the definition of local market rate. Ninety-three percent of the commenters opposed the definition as too low; many suggested the existing regulations for AFDC child care and TCC that define local market rate should be amended as well. Fourteen percent of the comments addressed the requirement that States define "at-risk of becoming eligible for AFDC." All of the commenters opposed the provision with the majority saying that being low-income alone ought to be sufficient and that any additional definition was just an administrative burden. Fifty-two responses commented on sliding fee scales. All commenters opposed the requirement that the family make at least a minimum contribution.

Approximately 17 percent of the commenters addressed methods of providing child care with 63 percent in favor of the requirement that States have a method of payment that accommodates a parent's choice of child care provider. Indeed, many commenters who opposed the definition of applicable standards expressed support for the general principle of parental choice enunciated in the proposed regulations. Many commenters also expressed support for the flexibility in delivering services that the proposed regulations permitted.

No other subject area was addressed in more than five percent of the comments. A complete discussion of the comments is contained in the preamble to the various regulatory provisions.

Order of Preamble and Regulations

The preamble discussion generally follows the sequence of the regulations, with the exception that the description of changes to the existing regulations at 45 CFR part 255 is last, whereas the changes to the regulation itself precede the At-Risk Child Care sections of the final rule at 45 CFR part 257.

Part 257—At-Risk Child Care Program

Purpose (Section 257.1 of the Final Regulations)

This section describes the purposes of the At-Risk Child Care program. States may provide child care to low income families in accordance with the regulations in this part to allow such families to work and thereby avoid receiving AFDC.

There were no comments on this section of the regulations.

State IV-A Agency Administration (Section 257.10 of the Final Regulations)

Section 5081 of OBRA 90 amends the Act to add the At-Risk Child Care program at section 402(i). As part of title

IV-A of the Act, the "State agency" referred to in section 402(i) is the single State agency as provided at section 402(a)(3) of the Act. Under longstanding Federal policy regarding the concept of "single State agency," the State IV-A agency must maintain overall responsibility for the design and operation of the program and may not delegate to other than its own officials functions involving discretion in overall administration or supervision of the program (see 45 CFR 205.100).

For child care provided under section 402(g) of the Act, this language on administration has meant that, operationally, a State IV-A agency could have another entity perform such non-discretionary functions as providing information to individuals seeking child care, issuing the payment to the child care provider, and collecting fees in accordance with the sliding fee schedule established by the State IV-A agency.

However, eligibility determinations must be made by the IV-A agency. Child care under section 402(g) of the Act is guaranteed to those meeting the statutory requirements, i.e., to employed AFDC recipients, to AFDC recipients in approved education or training programs, and to former AFDC recipients who are working. Therefore, because such care is guaranteed and eligibility for child care under section 402(g) is inextricably linked to either current or past receipt of AFDC, the determination of eligibility for child care under section 402(g) remains a discretionary decision with the State IV-A agency.

One of the goals of child care provided under section 402(i) is to prevent families from needing AFDC by providing child care so that they can work. Child care is not guaranteed, and eligible families will not be AFDC recipients, although it is possible that they might be former recipients. Therefore, questions have arisen about whether the State IV-A agency could have another entity determine eligibility for At-Risk Child Care.

The final regulation at § 257.10(c) allows the State IV-A agency to enter into contracts or agreements with other entities to perform administrative functions, including the determination of eligibility, and provide services under the At-Risk Child Care program.

We believe that there are significant differences in child care provided under section 402(i) which distinguish it from the other programs under title IV-A. First, as cited above, eligible individuals are not AFDC recipients by definition. Therefore, there is not an immediate connection to the State IV-A agency. In fact, many eligible individuals might not

avail themselves of child care services under section 402(i) if it meant going to the welfare office. If preventing the need for welfare is one of the goals of this program, requiring a family to go to the welfare office to obtain services might be counterproductive. Second, At-Risk Child Care is not guaranteed, and, therefore, the protections that must be afforded by the State IV-A agency do not apply. Third, it is consistent with the statement of the OBRA 90 conferees that "States will have maximum flexibility in determining how these new grant funds are used." H.R. Rep. No. 964, 101st Cong., 2nd Sess. 922, reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2627.

In allowing the State IV-A agency to contract or enter into an agreement with another entity for certain functions related to the At-Risk Child Care Program, we do not relieve the State IV-A agency of its overall responsibility for administering the program. Therefore, the regulation at § 257.10(b) enumerates the functions that the State IV-A agency must perform. Chief among these is the issuance of all policies, rules, and regulations, including the criteria for eligibility, governing the program. An entity performing functions related to the At-Risk Child Care program must do so in accordance with the policies, rules, and regulations issued by the State IV-A agency.

We believe that when the State IV-A agency carries out the At-Risk Child Care program through other public or private agencies, the process must be governed by written agreements or contracts which specify the roles and responsibilities of the respective agencies. It would be difficult for the State IV-A agency to satisfy the assurances in the At-Risk Child Care plan (see § 257.21) without such written agreements or contracts. Therefore, we have modified § 257.10(c) to reflect this requirement for written agreements and contracts. This requirement is consistent with the regulations for the Child Care and Development Block Grant which also require written agreements.

A principal purpose of the single State agency provision is to assure that there is a central point of responsibility in the State, i.e., the State IV-A agency, with adequate legal authority to which the Federal government can look to account for the expenditure of Federal funds under the program. Therefore, while State IV-A agencies have been granted broad contracting authority in carrying out the At-Risk Child Care program, it should be clear that ACF will hold State IV-A agencies responsible for the proper and efficient administration of

the program and will take any necessary compliance or disallowance actions against State IV-A agencies.

Comment: One commenter suggested that the requirement at § 257.10(c) that allows States to use contracts or other arrangements to carry out the At-Risk Child Care program be modified to restrict the use of private organizations to those which are private not-for-profit organizations.

Response: We do not believe that Congress intended to limit State flexibility in selecting the mechanism for delivery of this program. However, State rules on procurement must be observed. State rules on conflict of interest in the procurement process should provide adequate protection for proper and efficient administration of the program.

Comment: Most commenters supported the provision allowing States to enter into contracts with other entities to perform administrative functions, including the determination of eligibility for the At-Risk Child Care program. One commenter wanted to extend this provision to child care authorized by the Family Support Act (care provided under section 402(g) of the Social Security Act).

Response: We do not agree. In contrast to the At-Risk Child Care program, the guarantee of child care under section 402(g) of the Act requires the protections that must be afforded by the State IV-A agency, as explained above.

Comment: One commenter, while supporting the use of contracts and agreements, felt that the State's At-Risk Child Care plan should specifically state that the State IV-A agency retains responsibility and control over the program. Another commenter asked whether such contracts and agreements had to be in writing.

Response: We believe that the regulation at § 257.10(b), which enumerates the functions the IV-A agency must perform, along with the provision at § 257.10(c) that the judgement of the State IV-A agency may not be substituted for another's adequately reflects the IV-A agency's responsibility and control over the program. However, we also believe that it would be difficult for the State IV-A agency to satisfy the assurances in the At-Risk Child Care plan without written agreements or contracts. We have modified § 257.10(c) to reflect this requirement for written contracts or agreements.

Comment: Some commenters requested that § 257.10 be clarified to include hearings among the responsibilities that the State IV-A agency retains. One group

recommended that the notice and hearing requirements for section 402(g) child care be incorporated in the At-Risk Child Care program.

Response: We decided not to regulate in this area. Because At-Risk Child Care is not guaranteed like child care under section 402(g) of the Act, we do not believe it necessary to federally regulate specific notice and hearings requirements.

While we have not regulated specific notice and hearings requirements, States may adopt the notice and appeals process used for section 402(g) child care, adopt the processes they may already have in place for State-funded child care, or develop new processes to achieve consistency among child care programs in the State.

Requirement for a State At-Risk Child Care Plan (Section 257.20 of the Final Regulations)

The At-Risk Child Care program is authorized under a new section of the Social Security Act, 402(i), and therefore is not part of the title IV-A (AFDC) plan which is covered in section 402(a) of the Act. Although section 402(i) does not specify whether a plan is needed for the At-Risk Child Care program, we require that At-Risk Child Care be covered by a plan for two reasons. First, Federal funds for child care are available under section 403 of the Act, which provides that payments are made to States under approved plans. Second, we do not believe the Secretary could fulfill his statutory obligations unless we required a State plan which specified how the State would meet the requirements of section 402(i) of the Act. Authority to require a plan is found at section 1102 of the Act. This section requires that the Secretary establish rules "necessary to the efficient administration of the functions" with which the Secretary is charged under the Act.

Section 257.20(b) requires States to submit the At-Risk Child Care plan as an amendment to the State Supportive Services plan under parts 255 and 256. We believe that this approach will minimize the administrative burden on States for several reasons. Under its Supportive Services plan, a State provides supportive services for JOBS participants and child care for employed AFDC recipients, for participants in approved education and training activities (including JOBS), and for individuals who lose eligibility for AFDC due to employment (i.e., Transitional Child Care). The State IV-A agency is responsible for administering child care provided under both sections 402(g) and 402(i) of the Act and is, therefore, responsible for

submitting any State plan material associated with either section of the Act. Several of the provisions in these two sections of the Act are the same. These include the methods of payment that States may adopt, and the requirements to establish local market rates, define sliding fee scales, and coordinate with other child care programs.

We have modified the State Supportive Services plan preprint to address the requirements for the At-Risk Child Care program. As appropriate, we have revised the existing State Supportive Services plan preprint pages to reflect the addition of At-Risk Child Care. Where necessary, we have added new preprint pages. These additions and revisions have been approved by the Office of Management and Budget.

By considering the At-Risk Child Care program to be part of the State Supportive Services plan, there will be some additional burden on the States. This burden arises from the requirement that States must submit biennial updates of the State Supportive Services plan to HHS. However, we believe that this slight burden is justified for two reasons. First, States must update local market rates under the provisions of § 255.1(i). This will result in updating local market rates for child care under section 402(i) also since we have defined local market rates at § 257.63 the same as we did under § 255.4. The revised plan will provide a vehicle for doing this. Second, after an initial three-year plan, State plans under CCDBG must also be submitted biennially. Thus, beginning in FY 1995, State Supportive Services plans and CCDBG plans will be on the same schedule for submission to HHS. Incorporating the provisions of At-Risk Child Care into the existing State Supportive Services plan so that all plans are revised and submitted simultaneously will thus facilitate coordination of child care within States.

Comment: Several commenters have asked that we define the At-Risk Child Care plan as a substantial change to the Supportive Services plan; that is, one that requires the plan be made available for public review and comment.

Response: 45 CFR 250.20(f) which governs the submission of amendments to a State's JOBS or Supportive Services plan contains no requirement that amendments be made available for public review and comment. Therefore, we decline to require that the At-Risk Child Care plan be made available for public review and comment other than when it becomes subject to the biennial update requirements for review and comment at 45 CFR § 250.20(e).

We believe that the commenters may have confused the provision at 45 CFR 250.20(d) with the applicable provision at 45 CFR 250.20(f). 45 CFR 250.20(d) applied only to the situation in which a State had implemented its JOBS Program prior to the issuance of the final regulations for that program on October 13, 1989. Section 250.20(d) required such States to submit a JOBS plan that conformed to the final regulations on a preprint supplied by HHS. If the plan to be submitted contained substantial changes to the interim plan under which the State had been operating, the State had to submit the plan for a 30-day period of public review and comment.

Submission of the At-Risk Child Care Plan

The At-Risk Child Care program provisions under section 5081 were effective October 1, 1990. In order to provide initial guidance to States so that they could begin to provide At-Risk Child Care promptly if they so chose, we issued a Child Care Action Transmittal CC-FSA-AT-90-1 (dated December 19, 1990) describing how States could apply for FY 1991 funds. We issued instructions for applying for FY 1992 funds in Child Care Action Transmittal CC-ACF-AT-91-3 (dated October 11, 1991). Applications for FY 1991 and 1992 funds are approved on an interim basis pending issuance of these final regulations. An approved interim application will remain in effect until the Secretary acts on a State's plan that is submitted on the approved preprint.

At § 257.20(c) we require States operating an At-Risk Child Care program under an approved interim application to submit an amendment during the quarter following the quarter in which the preprint is issued. We recognize that States may have to make some operational modifications as a result of the final regulations and are giving States some flexibility as to exactly when they submit the plan to conform to the final regulations.

Since we are considering the At-Risk Child Care plan to be an amendment to the State Supportive Services plan, the effective date of the amendment may not be earlier than the first day of the quarter in which it is submitted. A State which is not operating an At-Risk Child Care program at the time of publication of these regulations may submit an amendment to the State Supportive Services plan at any time to implement a program. As an amendment to the State Supportive Services plan, the effective date may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted. Regardless of the quarter in which a

State implements an At-Risk Child Care program, the State is entitled to its "maximum grant" (as defined at § 257.60(c)) for the year. For example, suppose a State's limitation for FY 1992 is \$1 million, and for FY 1993 is \$1.5 million. It submits a plan on March 1, 1993, to begin operating an At-Risk Child Care program. The effective date of the plan may not be earlier than January 1, 1993. The State is entitled to its maximum grant of \$2.5 million dollars upon approval of the plan; however, it may not claim expenditures for any period prior to January 1, 1993.

Comment: One State suggested that the preprint should allow a State to cross-reference, rather than resubmit, information already included in other portions of its Supportive Services plan. Another asked if the same local market rates and sliding fee scale found currently in the State Supportive Services plan may be referenced in the amendment and updated at the time of the biennial update.

Response: We do not wish to put an undue administrative burden on the States in the submission of an amendment to the State Supportive Services plan. In developing the preprint for the At-Risk Child Care program, we looked at ways to cross-reference sections of the Supportive Services plan relative to child care. However, cross-referencing does not always work. For example, it should be noted that the provision at § 257.21(i) requires States to submit actual local market rates rather than the methodology to calculate them as required under § 255.1(i). We decided to require submission of actual local market rates because we found that requiring the methodology alone did not provide sufficient information for ACF to carry out its oversight functions.

Since the regulations do not require States to submit the At-Risk Child Care plan until the quarter after the quarter in which the preprint is issued, we do not expect any plans under the final regulations to be submitted prior to the submittal of the biennial update for JOBS. Interim At-Risk Child Care plans will remain in effect until the effective date of the preprint submittal in accordance with § 257.20(c).

Comment: One commenter asked whether an amendment to the State's Supportive Services plan which includes the local market rate survey methodology and sliding fee scale for the At-Risk Child Care program automatically revises other similar sections of the Supportive Services plan (for example, the Transitional Child Care sliding fee scale).

Response: As explained above, the preprint includes appropriate cross-references. A State's submission will have to clearly identify what sections are being amended. Of course, in the case of local market rate survey methodology, any amendment will affect local market rates for all child care under title IV-A, since the local market rate is defined identically for all title IV-A child care. However, as explained above, the At-Risk Child Care plan requires submission of local market rates.

State Plan Content (Section 257.21 of the Final Regulations)

The regulation at § 257.21 lists the information that is required in the At-Risk Child Care plan, which is part of the State Supportive Services plan, as described at § 257.20. We will provide preprint pages that will become part of the State Supportive Services plan preprint. The preprint will include pages which will guide States in submitting the At-Risk Child Care plan and will expedite review. It will also provide a basis for comparison of State programs.

In general, the content of the At-Risk Child Care plan reflects provisions that are described in other parts of the final regulations and, therefore, it is generally unnecessary to describe them here. For example, paragraph (b)(2) of this section of the final regulations requires the State to define "low income." This requirement is described in the regulations at § 257.30(a)(1) and discussed in the preamble to that section. However, there are some provisions that we elaborate on here. In addition, we describe the addition and deletion of certain provisions based on the comments we received.

The first provision is the requirement at § 257.21(f) that a State list the political subdivisions in which the At-Risk Child Care program is offered, if not available statewide. Unlike the provisions of sections 402(a) and 402(g) of the Act, which must be applicable statewide, the At-Risk Child Care program under section 402(i) of the Act is optional. It allows the State to set priorities for services and is subject to a cap on the amount of Federal funds available to reimburse the State for its expenditures. We, therefore, believe that a State need not offer the program statewide. However, the State must list in its State plan where the At-Risk Child Care program is available.

Second, we amended the final regulation at § 257.21(b)(3) to enable States to develop their own definitions of "physically or mentally incapable" as provided at § 257.30(b)(2)(i). A complete

discussion about this change is contained in the preamble to § 257.30.

Third, we added language at § 257.21(h) to require States to specify which relatives are exempt from registration requirements because they are providing care for members of their family in accordance with § 257.41(b).

Fourth, we added language at § 257.21(n) to require States to describe the health and safety requirements (if any) applicable to providers under this part for the prevention and control of infectious diseases, building and physical premises safety, and minimum health and safety training appropriate to the provider setting in accordance with § 257.41(a)(2). This addition results from the revision in the final regulations to allow States to deny payment to child care providers under this part who do not meet health and safety requirements. A complete discussion of this State option is contained in the preamble to § 257.41.

Comment: One commenter objected to the requirement that the State include "a description of the State's priorities" in the State At-Risk Child Care plan, suggesting that the statutory language does not require a State to get approval of its priorities, only that it report on them in the Annual Report.

Response: Although we still believe that a State cannot report on its priorities in the Annual Report if it has not previously established such priorities, we have decided to delete this provision from the At-Risk Child Care plan. Instead, as discussed in the preamble at § 257.50, States will have to submit priorities as part of the Annual Report. This change will ensure that we get annual updates on State priorities allowing our report to Congress to accurately reflect how States are using At-Risk Child Care funds.

Comment: Several commenters suggested that the regulations at § 257.21(n) should state whether the amount established for the base period expenditures is a single aggregate amount or separate totals for Federal and State expenditures.

Response: We have modified the provision to report "the separate amounts of Federal and State public funds expended for child care services during the base period." The preamble to § 257.64 contains additional discussion about calculating expenditures for the base period. We have also renumbered this provision: it is now § 257.21(d).

Comment: One commenter observed that § 257.21(a)(3) implies that all child care providers in the State must either be licensed, regulated, or registered and expressed concern that a State may be

required to develop a new set of regulations for registering all unlicensed providers.

Response: The language at § 257.21(a)(3) is consistent with the language at section 402(i)(5)(C) of the Act which states that providers, other than providers caring for members of their family, must be licensed, regulated, or registered. Thus, a State may have to establish a registration process for providers who are otherwise unregulated. However, as described more completely in the preamble to § 257.41, registration must be a simple process which facilitates appropriate and prompt payment.

Comment: One commenter suggested that the terminology at § 257.21(b)(1) be changed to "at risk of becoming eligible for AFDC" to be consistent with the statutory language on eligibility.

Response: We agree and have changed the regulatory provision accordingly.

Eligibility (Section 257.30 of the Final Regulations)

Section 402(i)(1) of the Act provides, "Each State agency may, to the extent that it determines that resources are available, provide child care * * * to any low-income family that the State determines is not receiving aid under the State plan approved under this part; needs such care in order to work; and would be at risk of becoming eligible for aid under the State plan approved under this part if such care were not provided."

Low Income

The regulation at § 257.30(a)(1) gives States the flexibility to define the low-income requirement of the program. States may wish to consider developing (or adopting) an income test that not only allows for variations in family size or the number of children in the family needing care, but also serves as a common standard for other child care services the State provides.

A number of Federal programs, including the Community Services Block Grant and Head Start, use the HHS poverty income guidelines, or a percentage of them, as eligibility criteria. As the guidelines are commonly understood indicators of low income, States may wish to consider using them for the At-Risk Child Care program.

The 1992 poverty income guideline for the 50 States and the District of Columbia for a family of 2 is \$9,190; for each additional member, it adds \$2,380. The 1992 poverty guideline for Alaska for a family of 2 is \$11,480; for each additional member, it adds \$2,980. The 1992 poverty guideline for Hawaii for a

family of 2 is \$10,570; for each additional member, it adds \$2,740. These guidelines were published in the Federal Register on February 14, 1992 (57 FR 5456), and States are referred to the Federal Register for additional information about the guidelines.

Another possibility is to adopt the standard for eligible families established by the State for the Child Care and Development Block Grant. Section 658P(4)(B) of the Child Care and Development Block Grant Act of 1990 provides that the State's standard for income of an eligible family cannot exceed 75 percent of the State median income for a family of the same size.

A State's definition of low income must be provided in its At-Risk Child Care plan, as required at § 257.21(b)(2).

At Risk of Becoming Eligible for AFDC

The construction of section 402(i)(1) of the Act appears to consider being "at risk" of becoming AFDC-eligible as separate from merely being low-income. However, neither section 402(i) of the Act nor the Conference Report elaborates on the term. In the absence of such guidance, and in response to comments discussed below, we have decided to allow States to define "at risk" in terms of low income alone. States still have the option of using other definitions of being at risk of becoming eligible for AFDC to establish eligibility or priorities for child care. The final regulation at § 257.21(b) requires the State to incorporate its definition of "at risk," whether the State uses low income or some other definition, in the State's At-Risk Child Care plan.

Additional definitions of "at risk" that States may want to consider include: (1) A family not eligible for Transitional Child Care because it did not receive AFDC in three of the previous six months; (2) a family whose eligibility for Transitional Child Care has expired because of the 12-month limit; (3) a family not receiving AFDC because the State has a time-limited Unemployed Parent (AFDC-UP) program and the family obtains employment during the period of non-receipt of aid; or (4) a family who is eligible for, but elects not to receive AFDC because its earnings would have resulted in only a minimum payment.

We have not required States to limit eligibility for At-Risk Child Care to only those families who otherwise would qualify for AFDC, but for the receipt of At-Risk Child Care. In doing so, we considered whether there were any factors that were so fundamental to receiving AFDC that a family could not be "at risk" of receiving AFDC if it did

not meet them. For example, we considered whether there would have to be a child who meets the definition of "dependent child" in section 406 of the Act. In keeping with our goal of State flexibility, while there clearly must be a child in the family who needs care, we allow the State to decide if it will require that the child meet the definition of "dependent child."

Thus, a State may adopt or modify any or all of the eligibility criteria for AFDC if it so specifies in its State At-Risk Child Care plan. For example, it could require that there be at least one "dependent child," or it could require a family to meet the limits on resources.

Comment: Most commenters felt that low income should be the sole test for eligibility for At-Risk Child Care. Some commenters stated that adding additional eligibility requirements to determine whether the family is at risk of AFDC dependency and thus potentially eligible for At-Risk Child Care, would be administratively burdensome and may impede some families' access to care.

Response: Based on the comments, we agree that low income alone as defined by the States is a good predictor of a family's being "at risk." We have, therefore, clarified the regulations to permit States to define at risk in terms of low income alone. Even so, low income is not the sole eligibility criterion for the At-Risk Child Care program. Families must not be receiving AFDC and also must need such care in order to work; these requirements are discussed below.

Need Such Care

Section 402(i)(1)(B) of the Act requires that the State determine that a family "needs such care" in order to work, as a condition of eligibility for At-Risk Child Care.

Comment: One commenter maintained that the Act does not define child care to exclude parental care and, therefore, At-Risk Child Care payments should be made directly to two-parent families, where only one parent works and the other remains at home to provide care to his or her own children.

Response: There are several reasons why we do not believe Congress intended to make At-Risk Child Care available in this situation. First, Congress placed the At-Risk Child Care program under title IV-A of the Act. The existing regulation at § 255.4(f) prohibits FFP for payments made for care pursuant to section 402(g) of the Act when that care is provided by parents or legal guardians. These persons have a legal responsibility to care for their children.

Second, the Act requires that payments be made based on a local market rate and that families contribute to the cost of care. This suggests that care is provided by someone other than a parent. In addition, the fact that the Act also requires providers to be licensed, regulated, or registered, and that they must allow parental access, further supports this understanding of Congress's intent that the care would be provided by someone other than a parent.

Third, the Earned Income Credit (EIC), which was greatly expanded by OBRA 90, is available to two-parent families where only one parent works. Even families earning too little to pay taxes receive the credit if they file a federal income tax return. It is through the EIC, rather than the At-Risk Child Care program, that we believe Congress intended to address the needs of low-income working families where one parent chooses to remain in the home to provide care.

While a parent or legal guardian may not receive payment for providing care to his/her own child(ren), States have the flexibility to determine on a case-by-case basis if a two parent family which otherwise meets the eligibility criteria would be eligible for At-Risk Child Care services under exceptional circumstances, even if only one of the parents works. An example of such an exceptional circumstance would be where one parent works but the second parent is bedridden and unable to provide care for the child(ren). This flexibility is consistent with existing policy for other title IV-A child care.

Comment: One commenter questioned whether cooperation with the Child Support Enforcement Program was a requirement of eligibility for the At-Risk Child Care program.

Response: States have the flexibility to develop the eligibility criteria for the At-Risk Child Care program, including a requirement for seeking child support. We strongly encourage States to promote the benefits of child support as an important aspect of achieving self-sufficiency and avoiding welfare dependence.

In Order To Work

We define "in order to work" as "to accept employment or remain employed" at § 257.30(a)(4). This definition is consistent with section 402(g)(1)(A)(i)(I) of the Act and the implementing regulations at § 255.2. It clarifies that child care under section 402(i) is related to actual employment and not to education or training activities that would be necessary in order for an individual to work at some

future point in time. In contrast, section 658P(4) of the Child Care and Development Block Grant Act of 1990 specifically provides that child care is available so that a parent or parents can work or attend a job training or educational program.

Comment: Several commenters wanted us to broaden our interpretation of "in order to work" to include education, training and job search activities which might result in future employment.

Response: The final regulation retains the definition contained in the proposed rule. That is, we do not define education, training, or job search as activities for which At-Risk Child Care is available.

In the Family Support Act of 1988, Congress amended the Social Security Act to provide child care under title IV-A to families on AFDC and specified the two situations for which child care was available: (1) when the care is necessary for an individual to accept or maintain employment; or (2) when an individual is in an approved education or training activity including JOBS. Similarly, in CCDBG (authorized at the same time as the At-Risk Child Care program) Congress was explicit in identifying "working" and "attending a job training or educational program" as distinctly separate activities for which child care is provided. We believe, therefore, that the "in order to work" language of section 402(i) clearly refers to accepting or maintaining employment.

Age of an Eligible Child

Under the regulation at § 257.30(b) the State may provide care to any child who is under the age of 13. The State may also provide care to a child who is age 13 or above and is physically or mentally incapable of self-care or who is under court supervision. The age 13 limit is consistent with the limits for child care under section 402(g) of the Act as established in the regulations at § 255.2 and § 256.2. It is also consistent with the limit established for the Dependent Care Tax Credit, as amended by section 703(a) of the Family Support Act and the limit for child care under section 658P of the Child Care and Development Block Grant Act of 1990.

For children who are eligible for At-Risk Child Care because they are physically or mentally incapable of caring for themselves or are under court supervision, the regulations at § 257.30(b) adopts the upper age limit for a dependent child as defined at section 2.2B of the State IV-A plan (i.e., under age 18 or up to age 19 at State option). This limit is also consistent with the

upper age limit for child care provided under section 402(g), because eligibility for child care under section 402(g) is limited to dependent children requiring such care, or in the case of Transitional Child Care, children who, if needy, would be dependent.

Comment: One commenter suggested that we extend services to children over age 13 whose safety or well-being requires adult supervision during the parent's absence. The commenter cited as examples situations where children over age 13 live in gang-controlled neighborhoods, are temporarily ill but do not require professional nursing care, or whose parents work nights or at a job that takes them out of town overnight.

Response: The regulation at § 257.30(b)(2) provides an exception for children over age 13 who have an officially recognized need for special supervision. We do not feel that an exception is justified for all those over age 13 needing supervision. Such an exception would be too broad and too difficult to define; in some States, it would obviate the age 13 limit. Finally, we maintain that limiting services to those under age 13 (excepting children with disabilities or under court supervision) reflects widely-held views on appropriate governmental participation in expenditures for child care services.

Comment: Several organizations objected to our limiting disability determinations to those made by physicians or licensed/certified psychologists. They suggested that a child's disability could be verified by a trained social worker or other qualified health professional such as a nurse practitioner or occupational therapist.

Response: We originally proposed to limit the determination of disability to physicians and licensed/certified psychologists to be consistent with the existing regulations for child care provided under section 402(g) of the Act. When the regulations for child care under section 402(g) were written, we were cognizant of the fact that section 402(g) child care was brand new and guaranteed to those who were eligible. We, therefore, put in limitations such as who could determine disability.

In contrast, At-Risk Child Care is not guaranteed. The State has an option on whether to serve this group and to what extent. Therefore, we have amended the regulation at § 257.30(b)(2)(i) to remove the restriction on who may make the disability determination. Instead, we have added a requirement at § 257.21(b)(3) that the State define "physically or mentally incapable." Of course, a State may still limit who can make the determination of incapacity as

it deems appropriate. We believe that this change will ease administration while continuing to ensure that eligibility is properly documented. Asking for the State's definition of "physically or mentally incapable" is also consistent with the regulations for CCDBG.

Providing At-Risk Child Care During Gaps in Employment

Although section 402(i) of the Act does not directly address the issue of providing care before employment begins or during gaps in employment, the final regulation at § 257.30(c) allows States the option of providing child care for up to two weeks before employment is scheduled to begin when an individual has a bona fide job offer and the child care arrangements would otherwise be lost.

Additionally, States may continue to provide care for up to one month when an individual is between jobs and child care arrangements would be otherwise lost. For example, if an individual accepts a new job and there is a break between the end of the previous employment and the beginning of the subsequent job, and child care arrangements would be lost if the child were taken out during this break, the State may pay for care for up to one month. We included these provisions to ensure that child care is not lost, and continuity of care is provided, so that a family can continue to be self-sufficient. The State must describe its policies on providing care before and during gaps in employment in its State At-Risk Child Care plan, as provided at § 257.21(1).

Comment: Those who commented on this provision endorsed our position allowing for care in advance of employment and during gaps in employment. However, the commenters suggested alternative time frames ranging from unspecified "reasonable" amounts of time, up to 90 days, allowing States to set time limits, to having different time frames for families who previously received At-Risk Child Care services.

Response: We retained the originally-proposed time frames which provide States with sufficient flexibility and at the same time introduce a measure of fiscal restraint. Our experience with child care under section 402(g) as well as a lack of substantive justification for accepting any of the proposed alternatives, leads us to conclude that the time frames for providing these optional services as described at § 257.30(c) are reasonable. States are reminded that they may have limits of shorter duration than those stated at § 257.30(c), or States may choose not to

provide services before employment begins or during gaps between employment.

Comment: Several commenters interpreted the proposed regulation which provided for child care for up to one month when an individual was between jobs as allowing for job search. They felt this was too short a period to find a new job. One commenter understood that the up to two weeks of care allowed before an individual begins working also allows for job search, and suggested that it be expanded to one month.

Response: We believe that the comments may indicate a misunderstanding of the proposed regulations. First, the optional two-week period of child care discussed at § 257.30(c)(1) is available only if the individual has a bona fide job offer and the child care arrangements would be lost if not entered into during that time. This was not intended to allow for child care while an individual is looking for work. This is consistent with our interpretation of "in order to work." The wording of the final regulation has been modified to remove any ambiguity.

Second, the proposed rule provided that the optional one month period described at § 257.30(c)(2) mirror the existing policy for child care under section 402(g). That is, care would be available only when an individual leaves one job for another, but the second job does not begin immediately and the child care arrangements would be lost if not continued during that time.

In response to the comments, we carefully considered whether to provide for job search as an allowable activity under the At-Risk Child Care program. While we understand that job search may be necessary to getting a job, we were concerned that if the limited resources available under the At-Risk Child Care program were used for job search, an unemployed job seeker could receive child care while a low-income working family is denied critically-needed child care. Such a result would run counter to the purpose of the program. Therefore, the final regulation at § 257.30(c)(2) remains unchanged.

Fee Requirement (Section 257.31 of the Final Regulations)

Section 402(i)(3)(A) of the Act requires the State agency to establish a sliding fee formula for the purpose of calculating a family's contribution for At-Risk Child Care. The regulation at § 257.31 provides States with flexibility in determining the formula for calculating these fees.

For example, because the same statutory language is used to describe the sliding fee scale for Transitional Child Care under section 402(g) of the Act and the sliding fee scale for At-Risk Child Care under section 402(i) (i.e., that the sliding fee scale be "based on the family's ability to pay"). States may elect to adopt existing Transitional Child Care scales.

In order to further compatibility with other programs, we have eliminated the proposed regulation requiring every family to contribute to the cost of care. As discussed below, the final regulation at § 257.31 gives States the flexibility to waive contributions from families whose income is at or below the poverty level. Thus, States have the flexibility to adopt the existing sliding fee scale used under other programs such as the Social Service Block Grant or the CCDBG.

Section 402(i)(4) of the Act provides that "the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986." However, contributions made by a family toward the cost of care pursuant to the State's sliding fee scale may be eligible for the Dependent Care Tax Credit under section 21 of the Internal Revenue Code of 1986.

Comment: Numerous commenters suggested that the regulations afford States the option of waiving fees for the lowest income families.

Response: We have revised the regulation at § 257.31 to allow States to waive fees for those families whose income is at or below the poverty level. We did this for several reasons. First, by definition, At-Risk Child Care program—eligible families are only one step away from actual receipt of AFDC. These families could actually have income that is no more than that of a family on AFDC. States are prohibited from charging AFDC families receiving child care under section 402(g)(1)(A)(i) of the Act a fee for child care services. Therefore, we believe that it is appropriate to give States the option to treat At-Risk families similarly. In this sense, we are also complying with Congressional intent, as stated in the Conference Report, that fee schedules remain the same as in the current law.

While we allow States the flexibility to decide whether to waive fees for families at or below the poverty level, we encourage States to consider the effect of this decision, as well as the design of their sliding fee scale in general, on the families served. We

believe that families may not be well served if, after some period of having fees waived, they are suddenly faced with paying for the entire or a substantial part of the cost of care.

Comment: Several commenters requested further clarification or guidelines for determining a family's ability to pay the required contribution for At-Risk Child Care. One commenter suggested that a family's contribution be expressed as a percentage of its income, rather than a set amount.

Response: We have not provided specific guidelines or requirements for determining a family's contribution. We recognize that States currently use a variety of fee scales, and they may also be in the process of revising these scales to address the wider range of potentially eligible families. Introducing additional requirements for sliding fee scales in the midst of other changes occasioned by this and the CCDBG would deny States the flexibility to manage and coordinate child care programs efficiently. Although we leave the design of sliding fee scales to the States, we encourage them to ensure that sliding fee scales accommodate parental choice and do not result in an unintentional "cliff effect" wherein a family's contribution rises more rapidly than its income, sometimes making a family ineligible for services before they have achieved self-sufficiency.

Comment: Some commenters felt that allowing fees to vary according to the category of care impermissibly restricts parental choice.

Response: Section 402(i)(3)(A) of the Act indicates that families must contribute to the cost of care in accordance with a sliding fee formula based on the family's ability to pay. We believe that a family's ability to pay is based on the family's size and income, not the category of care they select. Therefore, to vary the sliding fee according to the category of care selected is not permissible. We have added § 257.31(b) to clarify that sliding fee scales may not vary according to the category of care.

Comment: Some organizations requested additional regulatory language to ensure that families are not required to pay an "unofficial" double copayment—paying the required fee based on the sliding fee scale and paying the difference between the amount the State reimburses the provider and the actual cost of the care.

Response: It is unclear what solution the commenters would recommend as it is only in those instances when a family chooses care where the cost exceeds the local market rate that the family may have to make an additional "unofficial"

copayment. The statute prohibits FFP for payments above the local market rate so there is no option to pay above the local market rate. The alternative is to prohibit the parent from selecting such a provider. However, we do not want to limit the access of such families to that care if the family chooses to pay the additional cost. Therefore, we have not revised the regulation.

Methods of Providing Child Care (Section 257.40 of the Final Regulations)

Section 402(i)(2) of the Act provides States with a number of methods to provide child care. These methods are identical to those described in section 402(g) of the Act for child care for AFDC recipients and former AFDC recipients eligible for Transitional Child Care. Specifically, the State IV-A agency may:

- (1) Provide the care itself;
- (2) Arrange care through public or private providers by use of purchase of service contracts or vouchers;
- (3) Provide cash or vouchers in advance to the caretaker relative;
- (4) Reimburse the caretaker relative for child care expenses incurred; or
- (5) Adopt such other arrangements as the State IV-A agency deems appropriate.

We discuss the fundamental right of the parent to choose appropriate child care in the preamble to the regulations at § 257.41 concerning applicable standards of State and local law.

To insure that each parent does have choice, the regulation at § 257.40(b) requires that the State have at least one method of payment by which self-arranged child care can be paid. This requirement is consistent with requirements under parts 255 and 256. Of the four methods specified in § 257.40(a) we believe that two—providing the parents with cash or vouchers in advance or reimbursing the parents for child care expenses—can most effectively be used to ensure parental choice. We strongly urge that States adopt at least one of these methods, as discussed below.

Vouchers

Many States use some form of a voucher/certificate system for child care. Such systems can encourage parental choice regarding the selection of a provider, while ensuring that the selected provider receives the child care payment from the State IV-A agency (or its agent). In the case of Transitional Child Care or At-Risk Child Care, the parent's contribution (fee) must still be paid by the parent. Vouchers/certificates can increase parents' responsibility and choice compared to

methods in which the State IV-A agency (or its agent) makes payments directly to the child care provider through purchase-of-service or contractual arrangements. In order for the voucher/certificate method to afford such choice, it must be possible for the parent to easily obtain it, for the provider to receive timely payment for services rendered, and for the parent to use it with any provider.

By October 1, 1992, any State which receives CCDBG funds must have procedures in place to provide parents with certificates with which they can arrange for child care. We expect that States will actively explore ways in which a certificate system could be used for At-Risk Child Care as well.

Direct Payments to the Family

The State IV-A agency (or its agent) may pay the family directly either by providing payment in advance or through reimbursement. This method of payment maximizes parental choice and responsibility for child care.

Comment: A few commenters asked for definitions of terms such as "purchase-of-service contracts/vouchers," "vouchers," and "certificates."

Response: We have elected not to define these terms in the final regulations to insure that States have maximum flexibility in establishing the methods by which they provide child care under section 402(i). However, we believe that it may be useful to briefly discuss the various methods here.

The term "purchase-of-service contract" generally refers to contracts that State or local governments have with child care providers to furnish services to children of low income families. The contract usually specifies the number of spaces or "slots" to be subsidized and the reimbursement rate. At the time the contract is established, such slots are not usually associated with specific children.

The term "voucher" generally refers to a document that can be redeemed for services, in this case child care. We have chosen not to define voucher in the regulations so as not to limit the State's options on how to use vouchers. Vouchers could take the form of a check, coupon, or debit card given directly to the parent or a two-party check that both the parent and the provider would endorse before the provider could cash the check.

We have deleted the phrase "so that the child care costs may be prepaid" in the discussion of vouchers at § 257.40(a)(3). We do so to make the language consistent with the Act and § 255.3(a)(3) concerning the methods of

providing child care under section 402(g) of the Act. In addition, we were concerned that the "prepaid" language might suggest a State's flexibility as to the form of its vouchers was limited by implying that the voucher had to be the equivalent of cash. Although we are concerned with the outcome of any voucher system (i.e., that it facilitate parental choice by making the voucher easy to obtain and usable with any legal provider, and providing prompt payment to providers), we do not want to limit the State's flexibility in developing the form of the voucher and the State's child care delivery system.

As we noted before, the Child Care and Development Block Grant Act of 1990 requires all States that provide child care services with CCDBG funds to have a child care certificate system in place by October 1, 1992. The regulations for CCDBG also provide Grantees with broad flexibility as to how they design and implement a certificate program. We expect and strongly encourage State IV-A agencies and lead agencies under CCDBG (when they are not the same entity) to coordinate their methods of payment for the various funding sources for child care to foster the concept of seamless service.

Comment: One commenter suggested that States should be encouraged to maintain existing contracts with child care centers in "hard-to-serve" communities, because some centers may be forced to close without a stable funding base.

Response: The regulations give States broad flexibility in choosing methods of providing child care. They do not prohibit States from maintaining existing contracts.

However, as provided at § 257.40(c)(2), a State IV-A agency must establish at least one method by which self-arranged child care can be paid. We believe that providers (whether center-based or otherwise) which are located where there is a demand for service and which provide care that parents want will succeed.

Comment: Numerous commenters liked the fact that the regulations allowed a self-arranged method of child care in which the parent is able to choose child care which is family, community and culturally oriented. Several commenters urged that programs be mounted for consumer education about child care options available to parents under § 257.40(b).

Response: The At-Risk Child Care program provisions under section 402(i) of the Act, unlike the Child Care Development Block Grant Act, do not specifically require consumer education.

Therefore, we have not incorporated consumer education into the regulations. However, a State IV-A agency may provide information to acquaint eligible parents with the options for child care services available under the program, including information on how to select appropriate child care. We encourage States to provide information which enhances parental involvement and parental choice. Providing such information is an allowable expenditure under the At-Risk Child Care program.

Comment: A few commenters claimed that providing child care through the use of vouchers would lessen protection for children.

Response: Section 402(i)(2) (B) and (C) of the Act provides for vouchers as one of the payment methods that a State may use. However, child care paid by voucher is subject to the same requirements as care provided by any other method. It must meet applicable standards of State and local law in accordance with § 257.41(a) and any provider receiving a voucher (other than a provider caring solely for members of his or her family) must be licensed, regulated, or registered in accordance with § 257.41(b). Therefore, we do not believe that vouchers are any different from any other method of providing care in the area of protecting the health and safety of children.

Comment: One commenter said that self-arranged child care is not contemplated under the statute.

Response: The provision that States must have a method to pay for self-arranged care was first applied to child care authorized by the Family Support Act of 1988. Such child care is guaranteed for employed AFDC recipients, for AFDC recipients in approved education and training activities (including JOBS) and for former AFDC recipients who terminate cash assistance due to employment. The child care guarantee in section 402(g) child care would be undermined if an individual were not permitted to arrange child care appropriate to the family's needs. As we said in the preamble to the final regulations at § 255.3(d) (54 Fed. Reg. 42225, October 13, 1989), an individual's choice must not be constrained by the methods of payment for child care which the State IV-A agency has elected under its Supportive Services plan.

The language regarding methods of provision of child care in section 402(i)(2) concerning At-Risk Child Care is virtually the same as in section 402(g) which led us to believe that Congress wanted the same provisions for child care to apply. The regulation at

§ 257.40(c)(2) is consistent with the language at § 255.3(d)(2) and the requirements at part 256. The requirement that States have a method to pay for self-arranged care has expanded child care options for parents in the more than two years that it has been in existence.

Comment: Several commenters wished to include the option to reimburse the cost of child care to either the family or to providers, with advance payment provisions, as an alternate method. Some urged vouchers or direct advance payment to parents because providers usually require advance payment.

Response: The Act at section 402(i)(2) provides for advance payment and reimbursement methods to the family but does not specifically extend it to providers. However, a State may select from a variety of specified methods to provide child care and may adopt such other arrangements as the agency deems appropriate as provided at section 402(i)(2)(E) of the Act and at § 257.40(a)(5) of the regulations.

Comment: Several commenters said that the regulations should spell out a family's entitlement to use vouchers for the varieties of informal care in homes or by caregivers in the neighborhood.

Response: The State retains the flexibility to determine methods of payment. Therefore, a State is not required to use vouchers as a method of payment. However, at § 257.40(c)(2) we do require States to establish at least one method by which self-arranged child care can be paid, thus enabling a family to use the varieties of informal home or neighborhood care.

Comment: Numerous commenters stated that parents should be allowed to use child care vouchers with sectarian providers even if religious instruction and worship are part of its child care activities.

Response: The parent has the right to select child care which provides religious instruction. Payment mechanisms employed by a State must accommodate parental choice while avoiding any conflict with the Constitutional requirement for separation of church and State. As a consequence we caution States against arrangements that could give the appearance of direct funding of religious activities. In addition, it is advisable for a State to adopt a method for funding child care services which will not require it to define either "religious instruction" or to identify child care providers as having a "religious affiliation." Recent Supreme Court decisions suggest that payment mechanisms such as vouchers or

reimbursement to parents avoid conflict with the requirements of the First Amendment.

Consistent with Constitutional requirements to avoid any system of payment which appears to have been designed primarily as a means for aiding religious institutions, a State should not develop separate payment mechanisms exclusively for those parents who wish to purchase child care from religiously-affiliated institutions. States have final authority regarding the method of payment.

Comment: One commenter recommended that the word "category" be substituted for "type" and the reference be made to "family child care" in § 257.40(b).

Response: We agree. Throughout the final regulations, including § 257.40(b), we will use the term "category of care" to refer to center-based child care, group home child care, family child care and in-home care. We have added the phrase "in-home child care" to the list of categories of child care at § 257.40(b). This addition conforms this provision to § 255.3(c) regarding child care under section 402(g). We also use the term "family child care" to be consistent with terminology in section 402(i)(6)(B)(i) of the Act.

Comment: Some commenters pointed out that "caretaker relative" is a term which has a particular meaning as used in sections 402(a) and 402(g) of the Act. A few commenters suggested that the words at § 257.40 (a) and (b) be changed from "caretaker relative" to "parent" or "family" to reflect statutory language.

Response: We agree. In the final regulations we have deleted the term "caretaker relative" at § 257.40 (a) and (b) and have used the word "family" to be consistent with the Act at sections 402(i)(2) (C) and (D).

Coordination

Section 5081(d) of OBRA 1990 amends section 402(g) of the Act to provide that activities under section 402(i) must be coordinated with existing early childhood education programs in the State, including Head Start programs and preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for disabled children).

We believe that coordination in planning and delivery of services is essential to prevent duplication, to assure that child care services are available to the maximum number of

eligible families, and to provide a viable range of child care options for parents.

Definitions, administrative procedures, and provider eligibility rules which are as consistent as possible should ease the administrative burden on the State and local organizations. They should also enable smooth transitions for families as their situations change over time.

Since States will be required to submit biennial updates of their plans, we expect the coordination specified in this section to be carried out on an ongoing, rather than a one-time, basis.

The regulation at § 257.40(d) contains the requirement to coordinate. In addition to the agencies listed in section 402(g) of the Act, we have added existing child care resource and referral agencies based on the regulations at § 255.3(h). We believe that, as with AFDC child care and Transitional Child Care, this addition will assist the State IV-A agency to identify potential resources and minimize duplication of effort.

Comment: Some commenters believed that the regulations should include language at § 257.40(d) strongly encouraging coordination on programmatic, financial and facility issues between the At-Risk Child Care program and other child care programs to ensure continuity of care and allow funding for activities such as wrap-around services.

Response: We agree with the commenters that coordination is critical to insuring effective and efficient services. However we believe that both the requirement to coordinate at § 257.40(d) and the requirement to describe such coordination in the State At-Risk Child Care plan at § 257.21(m) are sufficient. Therefore we have not added any language to the final regulations. We believe that the State IV-A agency should have the flexibility to identify the most effective operational means to coordinate their child care activities consistent with the requirements at section 402(g) of the Act and at § 257.40(d). In designing programs, administrators must consider existing service delivery programs and coordinate with existing child welfare networks.

Comment: One commenter requested that we include the Social Services Block Grant in the list of programs at § 257.40(d) with which the title IV-A agency must coordinate.

Response: We agree and have amended the final regulation at § 257.40(d) to include the Social Services Block Grant, as provided in sections 2001 and 2002 of the Act. In order to

make maximum use of existing and increased resources States are required to coordinate among the many programs designed to help low income parents meet their child care needs. We have added the words "if applicable" because we recognize that some States do not use Social Services Block Grant funds for child care. In the final regulations at § 257.40(d) we have also added CCDBG to the list of programs with which the IV-A agency must coordinate.

Child Care Standards (Section 257.41 of the Final Regulations)

Section 402(i)(5)(B) of the Act provides that Federal financial participation (FFP) is only available for child care that meets applicable standards of State and local law. In the final regulation at § 257.41(a), we have added Tribal law because child care may be provided on an Indian reservation, and if Tribal standards exist, they are the applicable standards. In the absence of Tribal standards, State standards would apply unless Tribal areas are excepted under law.

Applicable Standards

In the NPRM we defined "applicable standards" as "licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation, regardless of the source of payment for the care." The provision was widely misunderstood as preventing States from having any standards, as requiring States to reduce existing standards, and as jeopardizing a State's eligibility for At-Risk Child Care funding if it had standards in place that only applied to subsidized care. The provision did not have any of the suggested consequences. It required that if a parent eligible for At-Risk Child Care selected a provider that did not meet a standard that only applied to subsidized care, the State could not deny payment to the parent for that care. It did not in any way preclude a State from giving parents information about selecting providers, from advising parents about licensing or regulatory requirements, or from notifying a parent that a provider did not meet licensing or regulatory requirements. It did not require States to eliminate or reduce existing standards in order to be eligible for At-Risk Child Care funding.

Nevertheless, this provision of the NPRM generated the most comments. The majority of the commenters objected to the provision, with most citing its incompatibility with the provisions of the Child Care and Development Block Grant Act of 1990, passed at the same time. Others believed it went beyond the regulatory

authority of the Secretary, that it interfered with the historic principle that gives States the authority to regulate in the area of subsidized child care, and that it jeopardized the health and safety of children in care.

As we said in the NPRM, we believe that "parental choice" must be a paramount consideration. Just as it is crucial for JOBS participants who attend mandatory work and training activities and former recipients who are eligible for Transitional Child Care to have choice and control over who will take care of their children when the parents must be away from them, it is crucial for families eligible for the At-Risk Child Care program to have choice. By definition, these families need the care in order to work, or otherwise they would likely become dependent on AFDC. Therefore, it is appropriate that they have the same access to the provider of their choice as families receiving child care under section 402(g) of the Act. Furthermore, it would be antithetical to our overall goal of supporting the family in its quest to remain independent and self-sufficient to interfere in so personal and critical a decision as who will take care of one's children.

However, we recognize that in enacting the Child Care and Development Block Grant Act of 1990, Congress acknowledged the importance of the health and safety aspects in the provision of child care and required States to have minimum health and safety requirements for all providers funded with CCDBG funds. Specifically, Congress identified three areas for health and safety requirements: prevention and control of infectious diseases, building and physical premises safety, and minimum health and safety training appropriate to the provider setting. At the same time, it is clear that Congress intended for the Block Grant to give parents a variety of options in addressing family child care needs. The implementing regulations for that program seek to achieve a balance between the authority of the States to establish requirements and the rights of parents to select the provider of their choice.

After considering the comments we received and the provisions of CCDBG, we have added an exception to the general definition of "applicable standards," which is at § 257.41(a)(1). We believe that this exception achieves a balance between concerns for health and safety and the rights of parents to select the provider of their choice. Section 257.41(a)(2) now provides that, at State option, a State may deny

payment for care which fails to meet requirements designed to protect the health and safety of children that are applicable to child care providers under other Federal or State programs. These requirements can be in the areas of: the prevention and control of infectious diseases; building and physical premises safety; and minimum health and safety training appropriate to the provider setting. As discussed later, we have made corresponding changes to § 255.4 of this chapter.

In looking at the issue, we considered several alternatives. One alternative was to retain the regulation as proposed, but provide additional clarification about its meaning since it was widely misinterpreted. There was support from commenters for the principle that parents getting subsidized care should have the same ability to choose a provider that a parent paying for the care has. This principle was the basis for the proposed regulation. However, there were a substantial number of comments that our regulations made "seamless service" impossible. The commenters pointed out that the requirement in the Block Grant—i.e., the State have minimum health and safety requirements that apply to all Block Grant providers except grandparents, aunts and uncles—meant that States could not pay a provider chosen by a parent under CCDBG who did not meet such requirements, but that they must pay the same provider chosen by a parent under title IV-A, if the requirements applied only to subsidized care. Commenters argued that the one way that has been suggested to insure seamless service—to implement generally applicable standards for all subsidized and unsubsidized care—is impracticable at this time.

A second alternative we considered was to not define applicable standards at all. Some commenters said the statute was clear on its face. We disagree. In fact, the very first questions about the meaning of the phrase came to ACF from various States. Since the Conference Report shed no light on how Congress intended the phrase to be interpreted, we believe that it is appropriate for ACF to interpret the phrase in light of the goals of the program. Giving parents a broad range of choices in child care best furthers the goal of maintaining and increasing self-sufficiency by allowing the parent to exercise his/her right and responsibility to choose the best care for his/her child. Thus, if standards imposed by the State significantly limit a parent's choice, they will undermine the goals of the program.

The third alternative is the one that we have adopted. Under this provision, a State has the option of denying payment for care that does not meet certain requirements designed to protect the health and safety of children. We base the distinction we have made between health and safety requirements and other types of standards on the fact that Congress specifically recognized the importance of these requirements by mandating that States set minimum health and safety requirements for all categories of care under CCDBG in three areas: the prevention and control of infectious diseases; building and physical premises safety; and minimum health and safety training appropriate to the provider setting. We believe that this modification in the final regulations will foster coordination among child care programs administered by States, but will still allow parents a choice of providers.

Child care standards that are generally applicable to a category of care are unaffected by this modification in the final regulations. Child care provided under section 402(i) is subject to any standard mandated in any law or regulation of the State or locality that generally applies to a category of care in the State or locality, e.g. center care, group family day care, family day care, and in-home care. For example, all States have child care licensure laws that include standards which address health and safety conditions and other aspects of care provided at child care centers. Since these are standards that have general applicability, they apply to title IV-A child care.

If a State has standards or regulations that apply only to subsidized care, there are several possible effects of the modification. The State could elect not to exercise its option under § 257.41(a)(2). This would mean that, for the purposes of title IV-A child care, any care chosen by the parent that does not violate a generally-applicable standard for a category of care is legal care for which the State must pay and would receive FFP.

As an alternative, the State could elect to limit payment for title IV-A child care to care meeting one or more of the health and safety requirements that are applicable to a category of care under other Federal or State programs. For example, if a State requires providers of other subsidized care to pass a criminal records or child abuse registry check, then the State could deny payment under title IV-A to a provider who fails the clearance process.

Finally, a State could limit payments for title IV-A child care to care meeting all of the health and safety requirements

applicable to a category of care provided under other Federal or State programs.

If a State has standards in areas which are not covered by the exception for health and safety requirements that we have just described, the following policies would apply. First, if those standards are generally applicable to all care in a particular category, then they apply to care provided under title IV-A. Thus, if a State sets standards for curriculum for center-based care and such standards are applicable to all center-based care in the State whether subsidized or not, then they are also applicable to IV-A-funded care.

By contrast, if standards (not covered by the exception for health and safety requirements), such as curriculum standards, only apply to subsidized care, the State may not deny payment for care selected by the parent if the provider does not meet these additional standards. For example, if a State has standards for curriculum only for family child care providers who receive State funds, such standards cannot serve as the basis for denying payments under title IV-A. If a parent eligible for title IV-A funds selects a provider who does not meet those standards, the State must pay for that care. The State is not required to eliminate the standards described above to be eligible for Federal funding under title IV-A; the State may not, however, use such standards as the basis for denying payments under IV-A.

While we have added an exception for health and safety requirements to the general definition of "applicable standards," we remain concerned that excessive health and safety requirements could have the effect of severely limiting parental choice. For example, a State requirement that family child care homes receiving subsidized funding have automatic sprinkler systems would likely have the effect of excluding this category of care. Or if the minimum health and safety training requirements were not appropriate to the provider setting, such requirements could have the effect of excluding a category of care. In the case of minimum health and safety training, we believe that for certain provider settings—such as home care settings—supplying information regarding applicable public health and safety codes to all registered providers through routine informational mailings, videotapes, or other media would be appropriate for the provider setting. Other, more rigorous requirements may affect parental choice.

Thus, State or local requirements regarding health and safety that the

State applies to child care under title IV-A cannot either, explicitly, or operationally, result in significant restrictions in the range of child care options. Therefore, we have added a provision at § 257.41(a)(3) that requirements applied pursuant to the exception in paragraph (a)(2) must not exclude or have the effect of excluding any categories of child care providers. This language is the same as that in the provision at § 257.41(b)(2)(v) which provides that registration requirements for the At-Risk Child Care program must not exclude or have the effect of excluding any categories of child care providers.

It should be noted that these provisions constitute an effects test. We will not predict in advance whether a particular health or safety requirement or registration procedure affects parental choice. Rather, if necessary, we would examine the actual effects of a particular requirement or procedure, giving the State an opportunity to respond, to determine if parental choice has been limited.

Registration

Under section 402(i)(5)(C) of the Act, FFP is available for payments made to a provider (other than an individual caring for members of his/her own family) only if the child care provider is licensed, regulated, or registered. The regulations at § 257.41(a), as discussed previously, address child care licensing and regulatory requirements. Section 257.41(b) of the final regulations addresses the requirement for registration.

Although there is no discussion in the legislative history, we think Congress intended the At-Risk Child Care registration requirement to be an alternative to child care licensing and regulatory standards, not another form of them. To interpret the provision otherwise would mean Congress was mandating that States set licensing and regulatory standards for all child care. It is unlikely Congress would do this without an explicit provision. We see the registration requirement as being similar to the registration requirement in section 658E(c)(2)(E) of the Child Care and Development Block Grant Act of 1990. In that provision, the requirement is intended to provide the State with basic information about unlicensed providers so that the State can pay the provider and can furnish the provider with information on training, technical assistance, regulatory requirements, and other topics.

Therefore, the regulation at § 257.41(b)(2) requires that registration

procedures must (1) only collect information necessary for the State to pay providers or furnish information to providers; (2) facilitate appropriate and prompt payment to providers; (3) allow providers to register with the State or locality after selection by the parent; (4) be simple and timely; and (5) not exclude or have the effect of excluding any categories of child care providers.

In keeping with our goal of State flexibility, we have not defined exactly what constitutes registration. We expect registration of providers for the At-Risk Child Care program to be a simple process, such as giving the State or locality the provider's name and mailing address. States or localities may also require providers to supply additional information, such as birth date or other identifying data needed to facilitate appropriate payment to the provider, and to allow the State or locality to disseminate information to the provider.

If States wish to require providers to meet standards, such standards must be set as part of the State's licensing and regulatory standards rather than as part of an At-Risk Child Care registration process which is intended only for information exchange with unlicensed and unregulated providers. Some States already have "registration" procedures, either on a mandatory or a voluntary basis. Such procedures may meet the requirements for registration that apply to At-Risk Child Care as described in § 257.41(b) if they are designed only to collect or exchange basic information. However, if a State's registration requirements include standards, they are considered licensing and regulatory requirements, and they do not meet the requirements of § 257.41(b). States have the option to extend such State requirements to all providers (so that all providers are licensed or regulated and do not need to register as defined in this section) or to adopt registration procedures for unlicensed or unregulated care provided in § 257.41(b)(1).

Section 257.41(b)(1) requires registration for unlicensed or unregulated providers before a State makes any payment under the At-Risk Child Care program. This language makes registration under the At-Risk Child Care program consistent with the registration requirement in the Child Care and Development Block Grant of 1990 and allows States to design compatible procedures. As previously discussed, we expect registration of providers to be a simple process which will facilitate appropriate and prompt payments. Payments must be timely so that providers are not effectively

discouraged from offering child care services. Although we are not regulating a time frame between request for registration and payment, States must ensure that it is a reasonable period. Section 257.21(h) requires States to specify this time frame as part of the description of their registration procedures in their At-Risk Child Care plans.

Comment: We received a substantial number of comments which suggested an array of additional activities, such as fingerprinting, health screening or conducting criminal records checks on providers, that should be allowed as part of the registration process for the At-Risk Child Care program.

Response: We believe that many of these comments were related to the proposed definition of "applicable standards." It appeared that the commenters were suggesting that the registration process be used to allow for health and safety standards which would not have been broadly applicable and would, therefore, not have been allowed under the proposed definition of applicable standards.

We have revised our policy on "applicable standards" as addressed in the preceding discussion, and we have given States the flexibility to deny payments for care that does not meet health and safety requirements which are applicable to other Federal or State child care programs. In allowing States to enforce health and safety requirements that are applicable to other Federal or State child care programs to child care provided under title IV-A of the Act, we believe that States will be able to undertake such activities as fingerprinting, health screening, and criminal records checks of providers.

Therefore, the registration process for the At-Risk Child Care program remains limited to those activities expressly delineated in the regulation at § 257.41(b)(2). Registration for the At-Risk Child Care program remains a simple process designed solely to facilitate payment or the furnishing of information to the provider.

Comment: One State requested clarification as to the degree of relationship that must exist for a provider to be exempted from the registration requirement.

Response: We have given the States the flexibility to establish the degree of relationship which defines "members of the family of the individual" who are exempted from the registration requirement at § 257.41(b). States may use existing definitions, adopt the

statutory provisions from the CCDBG, or develop other definitions.

We have added a provision that States must identify which relatives, if any, are exempted from registration. States must include this information in the description of their registration process in the State's At-Risk Child Care plan, as required at § 257.21(h).

Comment: A number of commenters suggested that providers who were previously exempted from licensing or regulations, such as sectarian providers, but who received vouchers in the past, should be exempted from the registration requirement at § 257.41(b).

Response: Section 402(i)(5)(C)(i) of the Act specifically requires that providers must be licensed, regulated or registered. The Act recognizes only one exception to this requirement—"an individual that provides such care solely to members of the family of the individual." As there is no statutory basis for extending the exemption to the registration requirement beyond family members, providers who heretofore have been exempted from State licensing or regulation must be registered in order to provide services under the At-Risk Child Care program. This requirement includes previously excepted sectarian providers.

Comment: One commenter asserted that requiring States to develop a new set of regulations for registering all unlicensed providers seemed contrary to the overall intent of the program.

Response: We do not agree. The regulation follows the language of the Act which requires (with one exception) all providers to be licensed, regulated or registered. The final regulation retains the originally proposed simple registration process which will facilitate appropriate and prompt payments.

As we stated above, the construction of the statute suggests that registration is an alternative to existing licensing and regulatory standards. Therefore, we do not expect that it would be as extensive as the State's licensing or regulatory requirements.

Comment: Several commenters felt that the regulation ignored existing State administrative and regulatory policies relating to registration. Others assumed that existing registration schemes would have to be discarded.

Response: We do not agree. Existing State registration requirements that are part of the generally applicable licensing or regulatory activities remain unaffected by § 257.41. The registration activities described at § 257.41(b) apply only to those providers whom the State does not already require to be licensed or regulated. Generally, registration for

the At-Risk Child Care program will pertain mainly to neighbors, friends and those relatives not excepted because they provide care solely to members of their family. Where these providers are already registered as part of existing licensing or regulatory activities, no additional registration or change to the existing registration process is needed.

Parental Access

Section 402(i)(5)(C)(ii) of the Act provides that FFP is only available for amounts paid for child care to the extent that the provider of the care allows parental access. This provision is incorporated in the final regulations at § 257.41(c).

We believe that parental access to children within the care setting enhances parental choice and involvement. Parents are concerned about health, safety, and quality of care their children receive; parental access allows them to identify problems and safeguard their children. Moreover, parental access promotes continuity of care between home and the provider.

Comment: One commenter felt that we should distinguish between regulated and unregulated providers on the issue of parental access. The commenter understood that the regulation required States to have procedures in place to give parents unlimited access and maintained that the State could not enforce access in those care settings which are outside of its regulatory jurisdiction.

Response: The regulation reflects the language of the Act at section 402(i)(5)(C) in that it does not distinguish between regulated and unregulated providers on the requirement to allow parental access. It applies to all providers. Therefore, the regulation remains unchanged.

The State may use its licensing, regulatory or registration processes to notify providers that they must allow parental access. The State must not pay for care where the provider does not afford parents unlimited access to their child(ren). States should also inform parents of their rights to access while their children are in the provider's care.

Comment: One commenter questioned why the proposed At-Risk Child Care regulations extended parental access to the provider's written records, while the Child Care and Development Block Grant and other title IV-A child care programs do not.

Response: We have deleted the reference to the provider's written records from § 257.41(c). This revision will enable States to have consistent parental access policies for all ACF-administered child care programs.

Reporting Requirements (Section 257.50 of the Final Regulations)

Section 402(i)(6) of the Act requires that, beginning with fiscal year (FY) 1993, each State prepare and transmit to the Secretary an annual report on the activities of the State carried out with funds made available under section 403(n) of the Act. Section 402(i)(6)(B) describes the content of the report. It is to contain information on: (1) the number of children who received services and the average cost of such services; (2) the State's licensing and regulatory (including registration) requirements; and, (3) its enforcement policies and practices in effect which apply to child care providers. Section 257.50(a) of the final regulations contains the annual reporting requirements.

Section 402(i)(6)(B)(ii) of the Act requires information about sliding fee schedules. However, as described in the preamble to § 257.21, we will collect this information as part of the State At-Risk Child Care plan that the State submits in order to provide services. We believe that such information is so fundamental to the way in which the State operates its program that it should be contained in the State plan. Since we will require such information in the State plan, we will not collect it again in the annual report submitted by the State. This will not affect the ability of the Secretary to report to Congress because the ACF will have copies of the approved State plans from which to gather the information. Furthermore, it will not affect public review of the information or requests for such information by any interested public agency, because the State At-Risk Child Care plan is also a public document which can be accessed. We further believe that such an approach is consistent with the statutory provision at section 402(i)(6)(C) of the Act that the Secretary ensure that compliance with the reporting requirements not be unduly burdensome on the States.

Section 402(i)(6)(B)(ii) also requires collection of information about the criteria applied in determining eligibility or priority for receiving services. In the NPRM, we had proposed to collect such information in the State At-Risk Child Care plan. However, based on the comments we received, we have decided not to have the State put it in the State plan, but to submit it in the annual report. We have added this provision at § 257.50(a)(4). Further discussion of this change is contained in the preamble to § 257.21.

Section 402(i)(6)(A)(iii) of the Act requires that the Secretary annually compile and submit to Congress the

State reports. In order for the Secretary to comply with this provision, we will require States to submit their reports to the Secretary no later than 90 days after the end of the Federal fiscal year for which they are reporting. This provision is contained in § 257.50(b).

Section 402(i)(6)(A)(ii) of the Act requires that the State make available for public inspection within the State copies of each report and provide a copy of each report, on request, to any interested public agency. This provision is contained at § 257.50(c).

Section 402(i)(6)(C) of the Act requires the Secretary to issue uniform reporting requirements within twelve months after the date of the enactment of the subsection for use by States in preparing the information required. We issued Action Transmittal CC-ACF-AT-92-1 on April 6, 1992 which provides guidance on collecting data on all child care provided under title IV-A except child care for JOBS participants. Information on child care for JOBS participants is reported through the JOBS reporting system described at § 250.80 of this chapter. We will issue additional guidance on submission of the other elements of the annual report in an Action Transmittal.

We have added a reporting requirement to the annual report to capture information necessary to determine that a State has not supplanted Federal or State expenditures for child care in accordance with § 257.64(b) (1) and (4).

Additional discussion of this provision is contained in the preamble to § 257.64.

Comment: One commenter expressed concern that the annual report appears to duplicate material required in quarterly reports.

Response: The only report required under § 257.50(a) is an annual report; there are no required quarterly program reports for the At-Risk Child Care program. We will continue to require quarterly financial reports as provided at § 257.66 of the final regulations.

Comment: One commenter requested that the types of information that a State is expected to report on its enforcement policies, especially those which apply to registered providers, be clarified in light of the provisions under § 257.41. The commenter recommended that the final regulation define which enforcement policies may be applied to registered providers and specify the types of enforcement policy information which a State is expected to report.

Response: We assume that the comment was prompted by concerns that the proposed definition of

applicable standards would prevent States from enforcing policies that exist in the State. The clarification of our policy concerning applicable standards at § 257.41(b) should make it clear that States will have the option to enforce certain health and safety requirements. We will issue additional guidance by Action Transmittal on how States are to submit their annual reports.

Comment: One commenter recommended that we reexamine our approach to reporting. The commenter believed that States should only be required to report the actual number of children and the aggregate average cost of child care (a single figure for all child care).

Response: Section 402(i)(6)(B)(i) of the Act requires that the annual report identify the number of children and the average cost of care: "Each report prepared and transmitted by a State under subparagraph (A) shall set forth with respect to child care services provided under this subsection—(i) showing separately for center-based child care services, group home child care services, family child care services, and relative care services, the number of children who received such services and the average cost of such services."

With respect to counts of children served, we expect to require States to report the annual average of the monthly number of children served. We believe that this approach is flexible enough to permit States to provide us with the information we must have to make our mandatory annual report to Congress while avoiding an unnecessary data collection burden on States. The Act does not allow for aggregating average costs.

Comment: A few commenters noted that the reporting requirements do not include separate full- and part-time categories for States to report either the number of children served or the cost of services. They suggested that, in order to get a clear picture of services provided and costs incurred, annual reports to HHS should include information on full-time/part-time usage and cost of child care.

Response: Section 402(i)(6)(B)(i) of the Act specifies States' reporting responsibilities for the At-Risk Child Care program.

There is no statutory provision for requiring State reports to be broken down by full- or part-time status nor is this information required under section 403(e) of the Act, the uniform reporting requirements that pertain to child care under section 402(g) of the Act (AFDC Child Care and Transitional Child Care). Therefore, requiring this information would be an unjustifiable administrative

burden on States. However, States have the option to require additional reporting requirements for their own information and monitoring purposes.

Comment: One commenter recommended that the final regulations provide that, once a State initially submits its licensing and regulatory requirements and its enforcement policies, any subsequent annual report must include only those changes, if any, made to such requirements and/or policies during the year covered by that annual report.

Response: The regulations stipulate, as required by section 402(i)(6)(B)(iii) and (iv) of the Act, that a State must report annually on its "current child care licensing and regulatory (including registration) requirements" and its "enforcement policies . . . which apply to licensed and regulated child care providers (including providers required to register)." We will issue additional guidance on reporting requirements in an Action Transmittal. We will try to keep the burden on States to a minimum while still being able to fulfill the statutory requirement to report to Congress each year.

Comment: One commenter suggested that when determining reporting requirements, HHS should consider the achievable level of automation within a State.

Response: We recognize that States have differing levels of automation. We anticipate issuing an Action Transmittal shortly that will provide guidance on systems development for child care. Additionally, since reporting requirements under the At-Risk Child Care program conform with those in other child care programs under title IV-A, we do not expect them to be unduly burdensome.

Comment: A number of commenters recommended that these regulations should aim for consistency in reporting requirements among CCDBG, At-Risk Child Care, and AFDC Child Care programs. The principal problem noted was the possible administrative burden on States when programs vary in their reporting requirements.

Response: The data elements to be reported for the At-Risk Child Care program are the same as for the other programs under title IV-A (the AFDC and Transitional Child Care programs) but are collected annually rather than quarterly. Section 658(K) of the Child Care and Development Block Grant Act of 1990 also requires only an annual report, although the informational elements for CCDBG are somewhat different. ACF will issue additional guidance on the specific reporting

requirements for CCDBG by Action Transmittal.

Availability of Funding (Section 257.60 of the Final Regulations)

Section 403(n)(2)(B) of the Act establishes an annual limitation on the amount of funds appropriated for title IV-A that may be paid to States for expenditures made under the At-Risk Child Care program. The term expenditures, which we define as actual cash disbursements, has the same meaning and application as for child care expenditures made under Parts 255 and 256. States receive funds for expenditures only.

The 50 States and the District of Columbia may operate an At-Risk Child Care program. Puerto Rico, the Virgin Islands, Guam and American Samoa may also operate a program, but funds for the Territories are subject to the limitations in section 1108 of the Social Security Act, which were not increased when the At-Risk Child Care program was authorized. We have added a specific provision at § 257.60(b) that clarifies that funding under section 403(n) is subject to the funding restrictions established under section 1108 of the Act. In addition, because American Samoa does not have an AFDC program, families cannot be at risk of becoming AFDC dependent. Therefore, in the case of American Samoa, implementation of an AFDC program must occur prior to or simultaneous with implementation of the At-Risk Child Care program.

State's Limitation

For purposes of clarification, we will use the term "limitation" to mean a State's portion of funds based on the formula provided in section 403(n)(2) (A) and (B) of the Act.

Section 403(n)(2)(A) of the Act provides that a State's limitation is equal to a percentage of the total available funds for a fiscal year (as provided in section 403(n)(2)(B) of the Act) that represents the ratio of children in the State to the national total number of children. As specified at § 257.60(c) (formerly § 257.60(b)), we will use the number of children under age 13 as the basis for calculating each State's limitation. We believe this is a reasonable approach since it is consistent with the age limits on eligibility established at § 257.30.

The Act provides that the data on the number of children used to determine each year's limitation shall be based on data available for the second preceding fiscal year, i.e., FY 1989 data was used in determining the limitations for FY

1991. For determining FY 1991 limitations, the numbers of children under 13 for the 50 States and the District of Columbia were taken from the Bureau of the Census estimates for 1989. Annual estimates for Puerto Rico, the Virgin Islands, Guam and American Samoa are not published by the Bureau of the Census. Thus, actual numbers of children under 13 from the previous decennial census report were used. These data were the best available data for FY 1991. In future years, we will continue to use the best available data for determining fiscal year limitations.

Comment: Several commenters expressed support for basing allotments on the relative number of children under age 13 in each State. However, a few of the commenters, in addition to supporting the use of number of children under 13, had some suggestions. One commenter suggested that we include the number of special needs children under the age of 18 in the calculation. Another suggested that we factor in the cost of child care in each State so that States where child care is more expensive would receive a bigger allotment.

Response: Section 403(n)(2)(A) of the Act requires that allotments be based on the relative number of children residing in each State, but did not specify a cut-off for the age of the children. We selected age 13 to be consistent with the age of an eligible child under this program. While special needs children under the age of 18 (or 19) are eligible to receive child care services under the At-Risk Child Care program, we chose not to include these children in the allotment formula because the data are not readily available, the definition of special needs varies from State to State, and assuming special needs children are evenly distributed, it would not have a significant impact on State limitations. Furthermore, the number of children over 13 with special needs to be counted would be small relative to the total number of children under age 13.

The Act has no provision for taking the cost of child care in each State into consideration in the funding formula. Therefore, as prescribed in the Act, the relative number of children in each State is the only basis for determining limitations.

Maximum Grant

Section 403(n)(2)(C) of the Act provides that the amount not paid to a State in a fiscal year, i.e., the amount representing the difference between the limitation for that year and the total of grant awards made to the State in that year, may be added to a State's limitation for the next fiscal year. For

purposes of clarification, the amount available for a fiscal year that represents the State's limitation for that year plus the unpaid amount added from the prior year will be referred to as a State's "maximum grant." An unpaid amount from one year may be added only to the State's limitation for the next successive fiscal year; it cannot be added to any subsequent fiscal year.

For example:

State A's limitation for year 1 is \$100. It may request grant awards for the fiscal year which in total do not exceed \$100. The State, however, requests a total of \$80 for year 1. Prior to the beginning of year 2, State A is informed that its limitation for that year is \$110. For year 2, the State's maximum grant is \$130, i.e., \$110 plus the \$20 not paid from the previous year. If the total amount paid in year 2 is less than \$110, the difference between the amount paid in year 2 and \$110 (the year 2 limitation) will be added to the State's year 3 limitation to determine the maximum grant for the third year. If the total amount paid in year 2 is more than \$110, no amount from year 2 can be added to the State's year 3 limitation.

In the proposed rule at § 257.60(c) (now § 257.60(d)), there was a typographical error. The word "not" was inadvertently added to the regulation. The policy, however, was explained correctly in the preamble to the proposed regulation. Therefore, in the final regulation, we have corrected the regulatory language at § 257.60(d) to be consistent with the policy as described above.

Comment: Several commenters objected to the proposed policy for determining a State's maximum grant. While there was general support for allowing States to add funds from a previous year's grant to the succeeding year's grant, the commenters did not agree with the provision that States can only carry excess funds into the immediately succeeding fiscal year's grant. These commenters stated that our proposed policy did not comport with the intent of the Act. They recommended instead that States be allowed to use excess funds from any previous fiscal year in any subsequent fiscal year.

Response: Section 403(n)(2)(C) of the Act does not support such an interpretation. "Excess" only exists when the amount paid to a State in a fiscal year is less than the State's "limitation" for that fiscal year and "excess" can only be added to the immediate succeeding fiscal year.

The first clause of paragraph (n)(2)(C) is the key. It modifies and limits the provision that adds "excess" from one year to the immediately succeeding fiscal year. The first clause specifically

provides that the "excess" is added only when the "limitation" determined under subparagraph (A) for a fiscal year exceeds the amount paid to the State for the same fiscal year. Subparagraph (A) is the formula for allocating funds among the States each fiscal year and defines a State's "limitation" as its share of the amount available based on the number of children residing in the State as a percent of the total residing in the United States.

Using the previous example, we can illustrate the provision of the law. In that example, the State's limitation for year 2 was \$110. The State's maximum grant for year 2 was \$130 (\$110 from the limitation and \$20 not paid in year 1). Applying this fact situation to paragraph (n)(2)(C) produces the following: "If the limitation determined under subparagraph (A) with respect to a State for a fiscal year (\$110 for year 2) exceeds the amount paid to the State under this subsection, the limitation determined under this paragraph with respect to the State for the immediately succeeding fiscal year (year 3) shall be increased by the amount of such excess." Thus, if the State is only paid \$100 in year 2, \$10 may be added to its year 3 limitation. However, if the State were paid any amount above \$110, there would be no excess funds to add to the year 3 limitation.

Grant Awards (Section 257.61 of the Final Regulations)

We considered several methods of awarding grants for At-Risk Child Care. For ease of operation, we have decided to follow the grant process in effect for child care under parts 255 and 256, with some modification to reflect statutory differences in funding.

Prior to the beginning of a fiscal year (year 1), we will inform a State of its limitation. We require the State to supply an estimate of expenditures for each quarter as we will issue funds through quarterly grant awards. The State will report actual expenditures on the quarterly expenditure report. We will adjust subsequent quarters' grant awards to reflect over- or under-estimates in prior quarters' expenditures.

Prior to the beginning of the following fiscal year (year 2), we will inform the State of its limitation for year 2. The amount unpaid for year 1 and the limitation for year 2 will constitute the maximum grant for year 2 in accordance with § 257.60(d). Quarterly estimates and grant awards for year 2 may not exceed the maximum grant for year 2.

The regulations applicable to title IV—A regarding the availability of funds,

e.g., the timely filing requirements at part 95, subpart A, and the method for submitting estimates and making adjustments at § 201.5 apply to the At-Risk Child Care program.

There were no comments on this section of the regulations.

Matching Requirements (Section 257.62 of the Final Regulations)

Section 403(n)(1)(A) of the Act provides that expenditures made under the program are available for matching at the Federal Medical Assistance Percentage (FMAP) rate. This provision pertains to both child care service payments and administrative expenditures made in providing these services.

We have clarified the regulation at § 257.62(b) to provide that expenditures "claimed" in a fiscal year will be matched at the FMAP rate in effect for that fiscal year. The proposed regulation provided that expenditures "made" in a fiscal year would be matched at the FMAP rate. At-Risk Child Care expenditures are still matchable at the FMAP rate, but the applicable FMAP rate is the rate in effect for the fiscal year in which the expenditures are claimed regardless of when the expenditures were made. For example, if a State made an expenditure in FY 1991, but does not claim it until FY 1992, the FMAP rate at which the State's expenditures will be matched is the State's FY 1992 FMAP rate. We made this change because a State cannot make a late claim against a past fiscal year's grant since the funds that remained unclaimed at the end of the fiscal year will have already been added to the succeeding fiscal year's limitation as described at § 257.60(d). In addition, we remind States that they are still subject to the timely filing requirements at 45 CFR part 95, subpart A of this title, as stated in § 257.61(c).

Use of Donated Funds as Match

Current ACF policy provides that, for the purposes of the AFDC and JOBS programs, donated funds may be used as the State share of expenditures. Regulations at § 235.66 and § 250.73 specify the conditions under which donated funds may be used as the State share of expenditures for AFDC training activities and JOBS program activities, respectively. Section G-4000 of Part V of the Handbook of Public Assistance provides that donated funds may be recognized as State funds subject to Federal financial participation (FFP) in administrative expenditures under the State IV-A plan.

At § 257.62(c), we permit public and private funds to be used as a State's

share of matching costs subject to certain conditions. For public funds, the funds must be appropriated directly to the State or local IV-A agency, or transferred from another public agency (including Indian tribes) to the State or local IV-A agency and under its administrative control or certified by the contributing public agency as representing expenditures eligible for FFP. They must not be used to match other Federal funds and must not be Federal funds, unless such funds are authorized by Federal law to be used to match other Federal funds.

For private funds, the funds must be transferred to the State or local IV-A agency and under its administrative control. They must be donated without any restriction which would require their use for assisting a particular individual or organization or at particular facilities or institutions, and they must not revert to the donor's facility or use.

Finally, § 257.62(c)(3) provides that any funds received by the State which do not meet the conditions set forth in the regulation but which are used for allowable expenditures of the program must be deducted from the State's total expenditure claims subject to FFP. This policy is consistent with current policy for other title IV-A programs.

Overall, commenters supported the provisions at § 257.62 that permit States to count otherwise unmatched, public funds and private, donated funds as the State share of funds available for Federal match. However, several others made additional comments.

Comment: One commenter asked what we meant about private donated funds not reverting to the donor's facility or use directly or indirectly at § 257.62(c)(2)(iii) since this language is different from the language at § 235.66(b)(3) and § 250.73(d)(2)(iii) that also deal with donated funds.

Response: We have deleted the words "directly and indirectly" from the regulation so the policy on donated funds at § 257.62 is consistent with the policy stated at § 235.66(b)(3) and § 250.73(d)(2)(iii).

Comment: One commenter recommended replacing the donated funds provisions at § 257.62(c)(2) with a policy that permits States to include private, in-kind donations as part of its State match. Other commenters also recommended that we permit States to use in-kind contributions as the State share, but not to the exclusion of private cash donations.

Response: In-kind contributions (the term used by the Department which we believe is identical to the commenters' "in-kind" donations) are property and

services that may be used by a State in meeting its matching requirement under certain Federal assistance programs. These contributions cannot be used as the State share under the At-Risk program because there is no provision for in-kind contributions in section 403(n) of the Act. Since the Act does not address the use of in-kind contributions as the non-Federal share of expenditures, we believe that the policy applicable to child care programs under parts 255 and 256 should apply. This policy has also been longstanding policy under title IV-A through the AFDC program.

We wish to further clarify that the prohibition on the use of in-kind contributions for use as the State share of expenditures applies to State in-kind as well as third-party in-kind contributions. The words "third-party" have been deleted from the regulation.

Private cash donations may be used as the State share as provided in the regulations at § 257.62(c)(2). Commenters generally favored these provisions. Therefore, while States are not permitted to use in-kind contributions as the State share of At-Risk Child Care expenditures, we will continue to permit States to use private cash donations as long as the provisions of § 257.62(c)(2) are met.

Waiver for Insular Areas

The regulation at § 257.62(d) provides that the waiver provision of 48 U.S.C. 1469a(d) applies to the matching requirement for the Territories of Guam, the Virgin Islands, and American Samoa. Under this provision, the first \$200,000 in the State's share of At-Risk Child Care expenditures is waived each fiscal year. We considered applying the \$200,000 waiver in matching requirements to title IV-A expenditures in the aggregate, including At-Risk Child Care expenditures. However, since Congress did not increase the ceilings for Territories as set forth in section 1108 of the Act when it created the At-Risk Child Care program, we decided to apply the \$200,000 waiver to the At-Risk Child Care program separately.

Allowable Expenditures (Section 257.63 of the Final Regulations)

Federal financial participation (FFP) is available only for allowable expenditures of the program. Section 402(i)(3)(B) of the Act provides that the payment for child care shall be in "an amount that is the lesser of (i) the actual cost of such care; and (ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary)."

Applicable Local Market Rates

Section 257.63(a) makes the regulations at § 255.4 (a)(2) and (a)(3) on local market rates applicable to the At-Risk Child Care program. Under these regulations, the following basic principles apply. Each State IV-A agency must establish local market rates based on a representative sample of providers, obtained in a survey by the State IV-A agency or other entity. Local market rates must be set at the 75th percentile of the rate for the category of care. Finally, local market rates must be determined by the category of care such as center care, group family child care, family child care, and in-home care. Rates should be differentiated by cost of care for infants, toddlers, preschool, and school-age children and by different rates for full-time and part-time care, if applicable.

We believe that adopting the same provisions for the At-Risk Child Care program that apply to child care provided under section 402(g) of the Act is appropriate for several reasons. It reduces the administrative burden on the State since it has already established local market rates for AFDC and Transitional Child Care. Further, we believe that, since the terminology used in sections 402(g) and 402(i) is exactly the same, it was Congress' intent that the rates be the same. This is also supported by the Conference Report agreeing to follow the Senate amendment which provides that rules relating to Federal matching rates, reimbursement, standards, and fee schedules would remain the same as in current law. H.R. Rep. No. 964, 101 Cong., 2nd Session 921, as reprinted in 1990 U.S. Code Cong. and Admin. News 2374, 2626. Finally, we continue to believe that the 75th percentile represents a reasonable definition of market rate and a reasonable balance between concerns about fiscal accountability and access to child care.

Comment: Many commenters objected to setting the local market rate at the 75th percentile. Some commenters recommended that it be eliminated for all title IV-A care. Others suggested that States be allowed to set local market rates at whatever level they choose so as to allow those who receive At-Risk Child Care equal access to care. A few commenters felt that limiting the local market rate to the 75th percentile relegates children who receive At-Risk Child Care to substandard care or creates a two-tier system of care.

Response: We are aware that there are a number of misunderstandings regarding our policy that the local market rate is to be set at the 75th

percentile. When we first considered the requirement in connection with title IV-A child care, it seemed obvious that if actual cost was to be paid only up to the local market rate, the actual costs charged for some child care would be more than the local market rate. Otherwise, the statutory provision has no meaning. It also seemed logical that in referring to a "market rate," Congress intended to maintain fiscal responsibility and limit payments to amounts generally charged in the marketplace. This is the common understanding of a "market rate." Thus, in defining the local market rate, it was necessary to develop a method for distinguishing between amounts generally charged for child care and amounts which exceeded what was generally charged. In other words, we wanted to develop a method which would allow States to pay the amount generally charged for child care, so that most caregivers would be included, without allowing or requiring States to pay for care which was much more expensive.

In developing this method, we first considered using the average cost of child care in an area. However, the average cost, by definition, would be in the "middle" of what is charged which approximates the 50th percentile. Because it is in the "middle," we realized that setting the local market rate at the average cost could have eliminated many child care providers, possibly even up to half of those in an area, including many who charged only slightly more than the average cost. We did not want to restrict the supply of providers in this fashion. We also wished to allow States more flexibility as to whom they could pay and give parents a real choice in providers. We decided to set the "local market rate" at the 75th percentile as it would include most providers in any given area, but would prevent the inefficient use of public funds by limiting payment to those providers charging more expensive or excessive amounts.

We believe that local market rates set at the 75th percentile provide broad access within each category of care, though not necessarily access to the very highest priced care. Most care, especially when there is little variation in the costs of individual providers within the same category, is available to those eligible for At-Risk Child Care. We believe that, by adopting the same statutory language relating to local market rates as used for care under section 402(g), Congress intended access to care for a broad range of low income working families, rather than unlimited

access to the most expensive care for a few eligible families.

Furthermore, we do not agree that a local market rate set at the 75th percentile relegates children to substandard care. While the very highest cost care may not be fully reimbursable with Federal funds, it does not follow that the care which is allowed is substandard.

Comment: We received many comments that indicated that the commenters did not fully understand how we applied the concept of percentiles. Many commenters thought that the regulations meant that for all care FFP would only be available for 75 percent of the actual cost of care (i.e., if the care cost \$100, FFP would only be available for \$75). Other commenters thought that it meant the percent of an average (or highest) market rate.

Response: Because of the confusion, we have decided that it would be helpful to explain how the 75th percentile is derived.

Percentiles are derived from ranked data and separate the lowest values from the highest values, based on a percentage point cutoff. A common use of percentiles is in standardized educational tests, where a percentile score is typically given to indicate what percent of students are below the score reported. In the case of child care rates, a percentile score would identify the percentage of child care providers (or slots) in the sample whose rates were lower.

To determine the 75th percentile for a sample of a particular category of child care, it is first necessary to rank all of the sample child care rates from lowest to highest. The number separating the 75 percent of providers (or slots) with the lowest rates from the 25 percent who are most expensive is the 75th percentile. Following is an example. In a local market area, a State develops a representative sample of weekly child care rates for center-based care in a local market and ranks them from lowest to highest: \$95, \$100, \$110, \$120, \$120, \$125, \$135, and \$150. Here, \$125 is the sixth value in a list of eight rates, and it represents the 75th percentile. Therefore, the local market rate would be established at \$125.

One additional step must be taken if the size of the sample is not a multiple of four because, in those cases, a State may not be able to precisely determine the 75th percentile. Modifying the earlier example, suppose rates of \$130 and \$140 were also included in the sample. Here, the ranked rates would be as follows: \$95, \$100, \$110, \$120, \$120, \$125, \$130, \$135, \$140 and \$150. In this case, \$130

represents the 70th percentile (i.e., 70 percent of the rates are at or below \$130), and \$135 represents the 80th percentile. Thus, any rate of \$130 or less is clearly within the 75th percentile, and any rate of \$135 or more is clearly above the 75th percentile. The State has discretion as to how to treat rates between \$130 and \$135; an obvious option would be to consider \$132.50 to be the 75th percentile because it is halfway between the 70th and 80th percentile figures.

The use of the 75th percentile does not necessarily mean that 25 percent of providers are excluded. In a freely operating market, we expect costs to have a normal distribution, that is, we expect most costs to be relatively close, with some very high and very low costs as well. In such instances, the 75th percentile would not operate to exclude a quarter of the providers. The effect depends on the variation between the cost of providers as well as the number of providers charging similar rates. When costs are normally distributed, a properly constructed and well executed local market survey should not result in the exclusion of an inordinate number of providers. For example, if actual costs for 10 providers were: \$95, \$105, \$110, \$110, \$115, \$100, \$105, \$115, \$115, and \$120, the 75th percentile market rate would be \$115. Only 1 provider out of the 10 would be above the 75th percentile.

In addition, it should be noted that local market rates must be set by category of care. Thus, a local market rate for center-based care may be higher than the local market rate for group family child care. Differences in local market rates among categories of care reflect many factors including differences in the costs of doing business (rent, insurance, utilities, etc.).

Comment: Many commenters asked that States be allowed to pay above the 75th percentile local market rate. Some of these commenters also requested that FFP be available to the State when it pays for care that costs more than the local market rate.

Response: States may pay for care that costs more than the local market rate. However, section 402(i)(3)(B) of the Act limits Federal payments for child care to "the lesser of (i) the actual cost of such care; and (ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary)." Thus FFP is not available for payments above the local market rate.

Comment: One commenter felt that local market rates should be set through an independent analysis by a financial analyst.

Response: In keeping with our philosophy of State flexibility, we have not imposed any requirements regarding sources of local market rates. Nor have we imposed any statistical formula to be used uniformly. However, in § 255.4(a)(2), we set minimum requirements which must be met in establishing these rates. Local market rates set according to these requirements, whether established by an independent analyst, the State IV-A agency, or another entity are acceptable.

Comment: Citing the argument that lower-cost care produces greater risks, one commenter maintained that providers' insurance premiums would rise without stricter regulations, frequent monitoring and aggressive enforcement.

Response: Even though the commenter did not substantiate that lower cost care is somehow "riskier," these regulations do not preclude States and localities from establishing licensing or regulatory requirements, or monitoring and enforcing them. Under these regulations States and localities retain full authority to establish the licensing or regulatory requirements.

It is important to remember that even if insurance premiums rise, they would be reflected in the providers' charges because they are a cost of doing business. These charges would, in turn, be reflected in the local market rate.

Statewide Limit

Section 402(i) of the Act does not require the State to establish a statewide limit as section 402(g)(1)(C) of the Act does for child care under the Family Support Act. The regulation at § 257.63(b) gives States the option to adopt a statewide limit (or limits) for At-Risk Child Care. We believe that giving States this flexibility is consistent with Congressional intent as reflected in the Conference Report referenced above. It gives States budgetary and planning control in an optional program with limited funding. It also allows States to achieve consistency in title IV-A child care programs.

The statewide limit may be the same as the limit(s) established by the State for AFDC and Transitional Child Care. It may be differentiated based on age or special needs. There actually could be as many as three statewide limits since there could be different limits for children two years of age and older, those under age two, and those with special needs. We have added the requirement at § 257.63(b)(1) that the statewide limit may not be lower than the disregard level at § 233.20(a)(11)(i). This limitation conforms with the

requirements for a statewide limit at § 255.4(a)(1).

States electing to set a statewide limit(s) for child care under the At-Risk Child Care program must describe the limit(s) in the At-Risk Child Care plan, as described at § 257.21(j).

Comment: Some commenters expressed concern that the statewide limit could be set at any level, that there was no "floor" below which the statewide limit could not be set.

Response: We have changed the language at § 257.63(b)(1) to clarify that States may not set a statewide limit which is lower than the AFDC disregard amount at § 233.20(a)(11)(i).

Comment: Many commenters objected to the use of a statewide limit maintaining that section 402(i) does not specifically address the use of a statewide limit.

Response: We agree that section 402(i) is silent on the issue of a statewide limit, and for this reason we have allowed the States the option whether to set a statewide limit. We have not required States to set a statewide limit.

Local Market Rates, Statewide Limit, and Payment Rates Under CCDBG

Finally, we wish to clarify the relationship between the local market rates, statewide limits, and payment rates under CCDBG. In reviewing State applications and plans for CCDBG, we found some which indicated that States intended to use CCDBG funds either to supplement payments for title IV-A child care above the 75th percentile or to raise title IV-A child care rates "up to the 75th percentile."

States may not use CCDBG funds to subsidize the rates for title IV-A child care above the local market rate (i.e., the 75th percentile). Sections 402(g) and 402(i) of the Act provide that Federal matching funds are only available for the actual cost of care up to the local market rate. Using CCDBG funds to contravene the funding limits in the IV-A programs would violate Federal appropriations law, including the axiom that an agency cannot do indirectly what it is not permitted to do directly.

Nonetheless, States may use CCDBG funds to raise title IV-A payments in certain circumstances. If the statewide limit is less than the local market rate, then CCDBG funds can be used to increase title IV-A child care payments between the statewide limit and the local market rate. For example, if the statewide limit is \$200, and the local market rate is \$300, up to \$100 in CCDBG funds could be used to supplement the IV-A payment up to the actual cost of the care. However, if

States use CCDBG funds in this manner, all CCDBG requirements apply to such care. For example, care would have to meet all health and safety requirements, providers would have to be registered if they were not licensed or regulated by the State, and parents would have to be offered the choice of a child care certificate.

It appears that some States misunderstood the 75th percentile to be a maximum rate, i.e., that States could set a lower reimbursement rate if the lower rate applied to an entire category of care. For example, one State had set payment rates which were as low as the 10th percentile for some categories of care in some areas of the State. For child care under title IV-A, States are required to pay the actual cost of care or the local market rate, whichever is less, subject to the statewide limit (which is optional for the At-Risk Child Care program). States which are not following this policy are out of compliance with title IV-A regulations. We intend to issue further guidance on setting rates for all child care programs administered by ACF in the near future.

This requirement does not preclude a State from negotiating a lower rate with an individual provider. A negotiated rate that a provider accepts becomes, in effect, the actual cost of that care.

An example may be useful. Assume that the local market rate (the 75th percentile) for center-based care in a local area is \$400. The statewide limit is also \$400 so it does not affect the example. A State cannot set its reimbursement rate for center-based care in that area at either a lower percentile (such as the 50th percentile) or a lower amount (such as \$300). A parent eligible for title IV-A child care chooses a center-based provider which charges non-subsidized families \$350. In this case, the State will pay the actual cost of care, as it is less than the local market rate. Moreover, there is nothing to preclude a State from negotiating with the provider on the actual cost of care. If the parties agree to \$325, that becomes the actual cost of care for which the State will receive FFP. Federal regulations prohibit the State from using CCDBG funds to supplement IV-A funds up to the \$325. However, if the statewide limit were \$200 (instead of \$400), \$125 of CCDBG funds could be used toward the cost of care.

Administrative Costs

FFP is also available for the general supervision and management of the program. It is clear from the language of the Act that the purpose of the program is to provide child care services to those low-income families who are at risk of

becoming dependent on AFDC unless child care is made available, permitting the parent(s) to work. Although there is no restriction regarding the amount of funds available for administrative expenditures, there must be a correlation between the child care services payments claimed and the administrative expenditures claimed. Such administrative expenditures claimed must be reasonable and necessary expenditures of the program. It would be improper for a State to use all or most of the funds available for a fiscal year to cover administrative expenditures. We will monitor States' performance in this area.

For child care under parts 255 and 256, FFP is not available for expenditures related to the recruitment and training of child care providers, resource development, and licensing activities. The regulation at § 257.63(c) applies the same restrictions to the At-Risk Child Care program. We believe that expenditures for these activities should not be funded through this program because funding for these activities is provided through the Child Care and Development Block Grant, authorized by the Omnibus Budget Reconciliation Act of 1990, and other Federal programs.

Comment: While some commenters expressed support for monitoring States for reasonable expenditures on administration of the program, other commenters suggested putting a percentage limitation on administrative costs. The suggested percentage limitations ranged from 10 to 20 percent.

Response: There are no limits on administrative costs under title IV-A, including the AFDC program or the other child care programs under section 402(g), and we have decided to maintain consistency under title IV-A. We will, however, monitor States to ensure that they keep their administrative costs at a reasonable level.

In addition, unlike CCDBG, there was no background information in the Conference Report to indicate Congressional intent for a limit on administrative costs. Absent such guidance, we did not regulate such a limit.

Unallowable Expenditures

Comment: One commenter pointed out that we did not address the recovery of erroneous payments in the proposed rule and suggested that we allow recovered funds to be used by the program for ongoing program expenses.

Response: Expenditures not made in accordance with the Act, the regulations, or the approved plan are not eligible for FFP. Thus, child care overpayments are not eligible for FFP. If

a State has claimed FFP for a payment which is later determined to be erroneous, the overpayment must be recovered.

As with other programs under title IV-A, the Federal share of any overpayments must be returned to the Federal government. Thus, only the State share of recovered overpayments may be used for ongoing program expenses.

Non-Supplantation (Section 257.64 of the Final Regulations)

Section 402(i)(5)(D) of the Act provides that amounts paid by the State IV-A agency for child care cannot "be used to supplant any other Federal or State funds used for child care services." Although there is no explanation of this provision in the legislative history, we assume that Congress intended to ensure that the new Federal funds being made available for child care are not simply used to replace existing expenditures, but are used to increase the availability of services. We note that a similar (though not identical) provision is contained in the Child Care and Development Block Grant Act of 1990, which was passed at the same time.

Since the provision prohibits supplantation for child care services generally, a State cannot replace current Federal or State funding for child care services with section 402(i) grant funds. However, it is possible for a State to use current funding (including continuation funding) as the State match for section 402(i) care. The following example may help clarify this principle.

If a State had been spending \$1 million in Social Services Block Grant funds, \$4 million in IV-A funds and \$6 million in State funds (\$4 million in IV-A match and \$2 million in supplemental State funds) on child care services, this level of funding must continue from non-section 402(i) sources to avoid supplantation. The State could not reduce its State spending to \$5 million and use \$1 million to match \$1 million in section 402(i) funds to achieve the previous level since it would be replacing State funds with section 402(i) funds in violation of the provision. However, the State could use the \$2 million in current supplemental State funds as its match for the section 402(i) funds, and thus increase child care services by \$2 million without having to increase State funding.

Expenditures Included in the Non-Supplantation Amount

In order for ACF to determine that the requirement of non-supplantation is met,

the final regulation at § 257.64(b) requires the State to establish a dollar value separately for Federal and State expenditures for child care services for a base period and for each subsequent twelve-month period. We will compare expenditures during each subsequent period with separate Federal and State expenditures during the base period to determine whether supplantation has occurred. The State will report the amount of Federal and State expenditures separately for each subsequent period in the annual report that the State must submit to the Secretary in accordance with section 402(i)(6) of the Act. We have added §§ 257.50(a)(4) and 257.64(b)(4) to the final regulations to reflect this requirement. The reported amounts of Federal and State expenditures for child care services should exclude expenditures under the At-Risk Child Care program. The requirement is limited to public funds.

Comment: One commenter said that, to be consistent with CCDBG, local expenditures should be included in the calculation of expenditures for the base period for the At-Risk Child Care program.

Response: Section 402(i)(5)(D) of the Act specifies "other Federal or State funds used for child care services." We note that Congress did not insert the word "local" in section 402(i)(5)(D), while it did use the word "local" in section 658E(c)(2)(j) of the Child Care and Development Block Grant Act of 1990, the comparable provision on non-supplantation. Therefore, we conclude that local funds are not generally included in determining the base period for the At-Risk Child Care program.

There is one exception, however. Section 403 of the Act provides that Federal funds are available to States for various activities to be conducted under title IV-A. Funds representing the non-Federal share are commonly referred to as the State share and sometimes include both State and local funds. For example, the regulation at § 257.62(c) refers to a "State's share of expenditures" eligible for FFP. This provision further explains how public funds can be used as the State's share, including public funds appropriated directly to the State or local IV-A agency or transferred from another public agency to the State or local IV-A agency. We, therefore, believe that when local funds are included within the general definition of State funds, it is appropriate to include local funds as State funds for the purpose of determining that supplantation has not occurred, in accordance with § 257.64(a).

Thus, local funds used as the State share of other title IV-A child care expenditures, whether through direct appropriation, transfer, or certification, must be included in the base period amount and in the calculation of expenditures for each subsequent period. We have added language clarifying this to § 257.64(b).

Comment: One State proposed that the amount be based on appropriations rather than expenditures.

Response: The Act refers to other Federal or State funds "used" for child care services. While this is an indefinite term, it seems clear that the purpose of the non-supplantation language in the Act is to increase the availability of child care services. Funds appropriated (e.g., by a State legislature), but not expended, have not been "used" for child care, and, therefore, cannot be supplanted. We have retained the language at § 257.64 that it is Federal and State expenditures during the base period that must be calculated.

Comment: One commenter asked whether expenditures for Head Start should be included in a State's calculation for the base period.

Response: Head Start is an early childhood development activity. Child care services are generally considered to be distinct from early childhood development activities, as can be seen in the definitions of these terms contained in the Child Care and Development Grant Act of 1990. Therefore, Head Start and other early childhood development activities would not be included in a State's calculation for the base period.

Comment: Several commenters questioned whether use of the term "total amount" meant that the State only had to determine a single aggregate amount of Federal and State expenditures. These commenters were concerned that the use of a single total of Federal and State expenditures would allow the State to supplant funding at one level of government when funding increased at another level.

Other commenters asked that they be given the same flexibility to have different base periods for different expenditures that is provided in the CCDBG regulations.

Response: We agree with the commenters' concern that the use of a single total of Federal and State expenditures could permit supplantation at one level of government when funding increased at another level. We believe that this is not in keeping with the intent of the Act. For this reason we require separate amounts for Federal and State expenditures in the final rule.

A State may use different base periods for different levels of government and submit separate expenditures for each. In determining whether supplantation has occurred, we will compare the separate Federal and State amounts reported for each subsequent period with the respective amounts reported for the base period.

We did not originally provide for different base periods because we did not believe that calculating expenditures for child care services would be as difficult as long as we gave States the flexibility in defining the base period. However, based on the comments, we are adding a provision at § 257.64(b)(2) that allows States to have different base periods for different expenditures. Section 257.64(b)(2) provides for different base periods on either a level-of-government basis (e.g. Federal or State) or some other basis that provides for fiscal accountability. We have not provided for different base periods on a program-by-program basis (as the CCDBG regulations do) because the provisions of section 402(i)(5)(d) only apply to child care services, and we would not expect there to be different "programs."

Base Period

We define the base period to be a twelve-month period (e.g., the State fiscal year) which includes the month one year prior to the first month for which the State has either an approved interim or final plan for the At-Risk Child Care program. For example, States which have approved interim plans that were effective October 1, 1990, must include the month of October 1989 in their base period. These States might use calendar year 1989 or a State fiscal year beginning July 1, 1989.

We established the base period above so that the first subsequent period would include a period during which At-Risk Child Care funds were available to the State. We provide flexibility in setting the base period by allowing the period to be any twelve-month period which includes the appropriate month described above. This policy allows for State fiscal years which do not coincide with the Federal fiscal year, or for other twelve-month periods of the State's choice.

Comment: Several commenters questioned the example given in the preamble to the NPRM on how to determine what month must be included in the base year. The preamble said that the month of September 1989 would have to be included in a State's base year if it began its At-Risk Child Care program in October 1990. The

commenters believed it should have been October 1989.

Response: The commenters are correct. The example has been corrected in the preamble to the final regulation.

Comment: Several commenters asked for clarification of the terminology in § 257.64(b)(2) "the first month in which the State implements the At-Risk Child Care program" because a State may not actually have provided services in the first month for which it had an approved plan.

Response: We consider a State to have implemented the At-Risk Child Care program as of the first month for which it has either an approved interim application (prior to publication of these rules) or an approved final plan. We have revised the language at § 257.64(b)(2) to clarify the definition of the base period.

Comment: One commenter said that States which began their At-Risk Child Care program during FY 91 should be held harmless if it turns out that they supplanted in FY 91 since the final regulations defining non-supplantation were not issued prior to their implementation of the program.

Response: We do not agree. Non-supplantation is a statutory requirement, not a regulatory requirement that the State could not anticipate. The requirement not to supplant exists even without Federal regulations. Furthermore, since the States have flexibility in defining the base period, we do not see how our definition of the base period could disadvantage a State.

General Administrative Requirements (Section 257.65 of the Final Regulations)

OMB Circular A-102, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," is currently incorporated in the Department's regulations at 45 CFR parts 74 and 92. The child care programs under parts 255 and 256 are subject to the regulations at part 74 because they are funded under section 403 of the Act which is an open-ended appropriation. While there is a limitation on total funds available for Federal obligation each fiscal year for At-Risk Child Care, the program is funded under the section 403 appropriation. For that reason, and for administrative simplicity, we believe that the At-Risk Child Care program should be subject to the requirements of part 74, instead of part 92. Therefore, the regulation at § 257.65 applies part 74 to the program. However, subparts G (Matching and Cost Sharing) and I (Financial Reporting Requirements) of part 74 are not applicable to the At-Risk Child Care program pursuant to the

regulation at 45 CFR 201.5(e) which provides that these subparts do not apply to title IV-A. Rather, the specific requirements of this part at §§ 257.62, 257.66 and 257.67 apply.

We received no comments on this section.

Financial Reporting (Section 257.66 of the Final Regulations)

The regulation at § 257.66 establishes the financial reporting requirements for the At-Risk Child Care program. States must report estimates and expenditures in the same manner that they report estimates and expenditures for child care under parts 255 and 256. We have added a new section to the ACF-231 (formerly the FSA-231), the financial reporting form used for estimates and expenditures made under title IV-A, for estimates and expenditures made under the At-Risk Child Care program.

Financial reports are distinct from the annual report required by section 402(i)(6)(A)(i) of the Act. Section 1102 of the Act, which permits the Secretary to establish rules that are necessary for the efficient administration of the program, provides our authority to require financial reports.

Section 257.31 requires a family receiving At-Risk Child Care to make a contribution toward the cost of the care based on a sliding fee scale set by the State IV-A agency. We consider a contribution paid directly to the State IV-A agency which has made a full payment to the provider to be program income. Consistent with longstanding policy, the regulation at § 257.66(b) provides that State IV-A agency must use the deduction alternative at § 74.42(c) when reporting such income. Thus, we will use such contributions to offset expenditures when States claim FFP for child care services payments.

Comment: One commenter suggested that the financial report require separate totals for Federal and State funds.

Response: On the ACF-231, we require States to report total expenditures for the At-Risk Child Care program and to separately report the Federal share of those expenditures. We will not require States to report the State share; by subtracting the Federal share from the total expenditures, we will be able to determine the State's share.

Comment: One commenter wanted clarification about when to report the contribution made by the family to the cost of care as program income.

Response: When the family makes its contribution directly to the State IV-A agency after the State has paid the provider the full cost of care, the State must report the contribution as program

income. When a State subtracts the contribution from the full cost of care, it should not report the contribution as program income since then it should be claiming expenditures representing the difference between the full cost of care and the contribution. We do not consider a family's contribution to be program income if the family pays the contribution either directly to the child care provider or to an agent acting on behalf of the IV-A agency (such as a resource and referral agency) if the provider or agent charges the State the difference between the full cost of care and the amount of the contribution.

Cost Allocation (Section 257.67 of the Final Regulations)

In accordance with the cost allocation requirements of Part 95, Subpart E, the regulation requires a State to amend its cost allocation plan to account for expenditures made under the At-Risk Child Care program. The regulation at § 95.519 provides that if a State has failed to submit an amended cost allocation plan, the costs claimed will be disallowed.

There were no comments on this section of the regulations.

Disallowance Procedures (Section 257.68 of the Final Regulations)

FFP improperly claimed for child care services and administration is subject to disallowance in accordance with Part 201. The regulation provides that the deferral and disallowance provisions at § 201.15 are applicable to the At-Risk Child Care program. In addition, the procedures for taking disallowances and managing appeals applicable to the AFDC program and child care programs at parts 255 and 256 are applicable to this program. This policy is consistent with our intent to administer these programs in a similar manner.

There were no comments on this section of the regulations.

Part 255—Child Care and Other Work-Related Supportive Services During Participation in Employment, Education and Training

Applicable Standards (Section 255.4(c)(2) of the Final Regulations)

We have amended § 255.4(c)(2) to clarify that applicable standards of State and local law are standards which are generally applicable to care of a particular type in the State or local jurisdiction regardless of the source of payment for the care. However, we have added an exception at § 255.4(c)(2)(ii) which provides that, at State option, a State may deny payment for care which fails to meet requirements designed to

protect the health and safety of children that are applicable to child care providers under other Federal or State programs. These requirements can be in the areas of: the prevention and control of infectious diseases; building and physical premises safety; and health and safety training appropriate to the provider setting.

Background

Under the Family Support Act of 1988, States must guarantee child care to AFDC families when needed for employment or to enable participation in approved education and training activities (including participation in JOBS). This provision was effective in each State on the date of JOBS implementation, but not later than October 1, 1990. Effective April 1, 1990, States must guarantee child care for up to 12 months for former AFDC recipients, who lose AFDC eligibility for an employment-related reason and need child care to accept or maintain employment. We published final regulations implementing these provisions on October 13, 1989. (54 FR 42146) Section 255.4(c)(2), which provides that child care must meet applicable standards of State and local law, applies to all child care provided under the Family Support Act (including TCC under part 256).

Applicable Standards

Following publication of the final regulations, questions arose about the meaning of the term "applicable standards." We, therefore, published an NPRM on June 25, 1991 in which we proposed to define "applicable standards" as "licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation, regardless of the source of payment for the care." The NPRM proposed to apply the same definition of "applicable standards" to all child care provided under title IV-A of the Social Security Act. For child care under section 402(g), the proposed regulation was at § 255.4(c)(2); for child care under section 402(i), the proposed regulation was at § 257.41(a)(2).

These provisions produced the largest number of comments on the proposed regulations. Commenters did not generally distinguish between the provisions when they commented. Therefore, the discussion on the comments and the revisions we made in the final regulations that is contained in the preamble to § 257.41 also applies to this section, and we do not repeat it here. We have amended § 255.4(c)(2) to incorporate the exception described in the preamble to § 257.41.

States that opt to enforce health and safety requirements for child care under parts 255 and 256 must describe those health and safety requirements in the State's Supportive Services plan. We will provide preprint pages on which a State can describe the requirements when we issue the preprint for the At-Risk Child Care program. If a State does not operate an At-Risk Child Care program, it should submit the appropriate preprint pages in the quarter following the quarter in which the Secretary issues the preprint. This schedule is set out in more detail at § 257.20(c).

(Catalog of Federal Domestic Assistance Programs: 93.021 Job Opportunities and Basic Skills Training; 93.036 At-Risk Child Care)

List of Subjects

45 CFR Part 255

Aid to Families with Dependent Children, Grant programs—social programs, Employment, Education and training, Day care.

45 CFR Part 257

Day Care, Grant programs—social programs, Reporting and recordkeeping requirements.

Dated: July 20, 1992.

Jo Anne B. Barnhart,
Assistant Secretary for Children and Families.

Approved: July 23, 1992.

Louis W. Sullivan,
Secretary, Department of Health and Human Services.

Accordingly, chapter II, title 45, Code of Federal Regulations is amended as set forth below:

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

1. The authority citation for part 255 continues to read as follows:

Authority: 42 U.S.C. 602, 603 and 1302.

2. Section 255.4 is amended by revising paragraph (c)(2) to read as follows:

§ 255.4 Allowable costs and matching rates.

(c) * * *

(2) The care meets applicable standards of State and local law, and/or Tribal law, where applicable.

(i) Applicable standards are licensing or regulatory requirements which apply to a category of care in the State, local area, or Indian reservation regardless of the source of payment for the care,

except as provided in paragraph (c)(2)(ii) of this section.

(ii) At State option, the State may deny payment under this part for care that does not meet requirements designed to protect the health and safety of children that are applicable to child care providers under other Federal or State programs in the following areas (as described in the State's Supportive Services plan):

(A) The prevention and control of infectious diseases (including immunization);

(B) Building and physical premises safety; and

(C) Minimum health and safety training appropriate to the provider setting.

(iii) Requirements applied pursuant to paragraph (c)(2)(ii) of this section must not exclude or have the effect of excluding any categories of child care providers.

3. A new part 257 is added to read as follows:

PART 257—AT-RISK CHILD CARE PROGRAM

Sec.

257.1 Purpose.

257.10 State IV-A agency administration.

257.20 Requirement for a State At-Risk Child Care plan.

257.21 State plan content.

257.30 Eligibility.

257.31 Fee requirement.

257.40 Methods of providing child care.

257.41 Child care standards.

257.50 Reporting requirements.

257.60 Availability of funding.

257.61 Grant awards.

257.62 Matching requirements.

257.63 Allowable expenditures.

257.64 Non-supplantation.

257.65 General administrative requirements.

257.66 Financial reporting.

257.67 Cost allocation.

257.68 Disallowance procedures.

Authority: 42 U.S.C. 602, 603, and 1302.

§ 257.1 Purpose.

This part pertains to the At-Risk Child Care program which permits States to provide assistance to low-income working families who need child care in order to work and are otherwise at risk of becoming eligible for AFDC.

§ 257.10 State IV-A agency administration.

(a) The State agency responsible for administering or supervising the State's title IV-A Plan is responsible for administering the At-Risk Child Care program.

(b) The following functions must be performed by the State IV-A agency:

(1) Planning for and design of the At-Risk Child Care program, including submission of the State Plan to the Secretary;

(2) Establishing eligibility criteria;

(3) Setting local market rates and the sliding fee scale;

(4) Issuing policies, rules, and regulations governing the program;

(5) Submitting reports required by the Secretary as specified at § 257.50;

(6) Submitting quarterly estimates and expenditure reports pursuant to § 257.61; and

(7) Submitting Standard Form LLL (SF-LLL) which assures that funds will not be used for political lobbying purposes, pursuant to part 93 of this title, prior to the beginning of each fiscal year.

(c) Except for functions described in paragraph (b) of this section, the State IV-A agency may carry out the At-Risk Child Care program through written arrangements or contracts with other State or local administrative entities, or other public or private organizations.

(1) In doing so, the entity or organization must follow the policies, rules, and regulations of the State IV-A agency and must not have the authority to review, change, or disapprove any State IV-A agency administrative decision. Neither shall the entity or organization substitute its judgment for that of the State IV-A agency in the application of policies, rules and regulations promulgated by the State IV-A agency.

(2) Other entities or organizations may determine individual eligibility for the At-Risk Child Care program in accordance with rules established by the State IV-A agency.

§ 257.20 Requirement for a State At-Risk Child Care plan.

(a) The State IV-A agency must submit the At-Risk Child Care plan to the Secretary for approval.

(b)(1) The At-Risk Child Care plan shall be submitted as an amendment to the State Supportive Services plan which is defined at § 255.1 of this chapter.

(2) An At-Risk Child Care plan may be submitted at any time during the quarter in which the State intends it to be effective. Upon its approval, the plan will be effective not earlier than the first day of the calendar quarter in which it is submitted.

(3) A State shall be entitled to its maximum grant, as defined at § 257.60(d), for any fiscal year in which it has an approved At-Risk Child Care plan; however, it may not claim expenditures for any period prior to the effective date of the State At-Risk Child Care plan.

(c)(1) A State operating an At-Risk Child Care program under an interim application approved prior to the issuance of At-Risk Child Care preprints shall submit a new At-Risk Child Care plan as an amendment to its Supportive Services plan to the Secretary for approval after issuance of the preprint.

(2) The amendment required under paragraph (c)(1) of this section must be submitted in the quarter following the quarter in which the preprint is issued, to be effective not earlier than the first date of the calendar quarter in which it is submitted.

(3) A State with an approved interim application with a start date of October 1, 1990, may claim Federal matching funds for expenditures for the period beginning October 1, 1990.

(d) A State that submits a plan to provide for At-Risk Child Care that is not approvable will be given the opportunity to make revisions before final disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and part 213 of this chapter.

§ 257.21 State plan content.

A State's At-Risk Child Care plan must include the following:

(a) Assurances that:

(1) The State IV-A agency will, upon approval of the plan, administer the At-Risk Child Care program in accordance with the requirements of sections 402(i) and 403(n) of the Social Security Act and the regulations under this part;

(2) Child care meets applicable standards of State and local law in accordance with § 257.41;

(3) All child care providers, except those giving care solely to members of their family, are licensed, regulated, or registered by the State or locality in which the care is provided in accordance with § 257.41;

(4) Any provider of child care must allow parental access, in accordance with § 257.41;

(5) Amounts expended by the State for child care under this part do not supplant any other Federal or State funds used for child care services;

(6) Child care provided or claimed for reimbursement is reasonably related to the hours of employment;

(7) Individuals are not discriminated against on the basis of race, sex, national origin, religion, or handicapping condition in access to the At-Risk Child Care program.

(b) Definitions of the following terms:

(1) At-Risk of becoming eligible for AFDC (if any other than low income);

(2) Low income, as it will be used to determine eligibility for the program;

(3) Physically or mentally incapable of caring for himself or herself, pursuant to § 257.30; and

(c) Any other eligibility criteria that the State adopts, pursuant to § 257.30;

(d) The base period(s) and the separate amounts of Federal and State public funds expended for the child care services during the base period, as provided in § 257.64;

(e) A description of the administrative structure, identifying any entities with which the State IV-A agency has entered into written contracts or agreements, and specifying any entities that determine eligibility, as provided in § 257.10;

(f) If not provided statewide, a list of political subdivisions where the At-Risk Child Care program is offered;

(g) Methods the State agency will use to provide child care in accordance with § 257.40;

(h) A description of the State's registration process for unlicensed and uncertified providers including time frames for payment, in accordance with § 257.41(b), and which relatives, if any, are exempt from the registration requirement at § 257.41(b);

(i) Local market rates, in accordance with § 257.63(a) and § 255.4(a) of this chapter;

(j) The statewide limit(s), if any, in accordance with § 257.63(b);

(k) The sliding fee scale under which families will contribute to the cost of care, in accordance with § 257.31. This includes the income rules used to calculate the family's contribution to the cost of care, in accordance with § 257.31;

(l) A description of the State's policy on providing child care during gaps in employment, in accordance with § 257.30(c);

(m) A description of the coordination of the At-Risk Child Care program with existing IV-A child care programs, with other Federally-funded child care programs, and with child care provided through other State, public, and private agencies; and

(n) A description of the health and safety requirements, if any, for the prevention and control of infectious diseases (including immunization), building and physical premises safety, and minimum health and safety training appropriate to the provider setting, in accordance with § 255.4(c)(2)(ii) of this chapter and § 257.41(a)(2).

§ 257.30 Eligibility.

(a) A family is eligible for child care under this part provided the family:

(1) Is low income, as defined in the approved State At-Risk Child Care plan;

- (2) Is not receiving AFDC;
- (3) Is at risk of becoming eligible for AFDC, as defined in the approved At-Risk Child Care plan;
- (4) Needs such child care in order to accept employment or remain employed; and

(5) Meets such other conditions as the State may describe in its approved At-Risk Child Care plan.

(b) The State may provide child care for any child in the family who needs such care and who:

- (1) Is under age 13; or
- (2) Is under age 18 (or under age 19, if the State so provides in its definition of dependent child in its State IV-A plan), and
- (i) Is physically or mentally incapable of caring for himself or herself, as defined in the State's At-Risk Child Care plan, or

(ii) Is under court supervision.

(c) A State IV-A agency may provide child care if child care arrangements would otherwise be lost:

- (1) For up to two weeks prior to the scheduled start of employment; or
- (2) For up to one month during a break in employment if subsequent employment is scheduled to begin within that period.

§ 257.31 Fee requirement.

(a) The State IV-A agency shall establish a sliding fee formula based on the family's ability to pay that provides for contributions from each family towards the cost of care provided under this part.

(b) Contributions may not be based on the category of care the family selects.

(c) The State IV-A agency may waive the contribution from a family whose income is at or below the poverty level for a family of the same size.

(d) The State IV-A agency may vary the period of collection for different fee levels.

(e) The State IV-A agency may establish whether fees are paid to the providers or to the State agency.

§ 257.40 Methods of providing child care.

(a) A State may use any of the following methods:

- (1) Providing the care directly;
- (2) Arranging the care through public or private providers by use of purchase of service contracts or vouchers;
- (3) Providing cash or vouchers in advance to the family;
- (4) Reimbursing the family for child care expenses incurred; or
- (5) Adopting such other arrangements as the agency deems appropriate, including certificates.

(b) If more than one category of child care is available, e.g., center-based child

care, group home child care, family child care or in-home child care, the family must be provided an opportunity to choose the arrangement.

(c)(1) The State IV-A agency may select the method of payment under paragraph (a) of this section.

(2) The State IV-A agency must establish at least one method by which self-arranged child care can be paid.

(d) The State IV-A agency must coordinate its child care activities under this part with existing child care resource and referral agencies and with early childhood education programs in the State, including Head Start programs, preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Child Care and Development Block Grant, the Social Services Block Grant, if appropriate, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for disabled children).

§ 257.41 Child care standards.

(a) Child care provided with funds under this part must meet applicable standards of State and local law, and/or Tribal law.

(1) Applicable standards are licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation, regardless of the source of payment for the care, except as provided in paragraph (a)(2) of this section.

(2) At State option, the State may deny payment under this part for care that does not meet requirements designed to protect the health and safety of children that are applicable to child care providers under other Federal or State programs in the following areas:

- (i) The prevention and control of infectious diseases (including immunization);
- (ii) Building and physical premises safety; and
- (iii) Minimum health and safety training appropriate to the provider setting.

(3) Requirements applied pursuant to paragraph (a)(2) of this section must not exclude or have the effect of excluding any categories of child care providers.

(b)(1) All providers of care who are not required to meet applicable standards as provided in paragraph (a) of this section and who are not individuals providing care solely to members of the individual's family, must be registered by the State or locality in which the care is provided prior to receiving payment.

(2) Registration procedures must:

(i) Collect only such information about providers required to register, pursuant to paragraph (b)(1) of this section as is necessary for the State to make payment to the provider or furnish information to the provider;

(ii) Facilitate appropriate and prompt payments;

(iii) Allow providers to register with the State or locality after selection by the parent(s);

(iv) Be simple and timely; and

(v) Not exclude or have the effect of excluding any categories of child care providers.

(c) Child care providers receiving At-Risk Child Care funding must afford parents unlimited access to their children, and to providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider.

§ 257.50 Reporting requirements.

(a) Beginning with FY 1993, the State IV-A agency shall prepare and submit an annual report to the Secretary that contains the following:

(1) The number of children receiving services and the average cost of such services separately by category of care, including center-based child care, group home child care, family child care, and relative care;

(2) The child care licensing and regulatory (including registration) requirements in effect in the State with respect to each category of care;

(3) The enforcement policies and practices in effect in the State which apply to licensed and regulated child care providers (including providers required to register);

(4) The State's criteria applied in determining eligibility or priority for receiving services;

(5) The separate amounts of Federal and State expenditures for each subsequent period, in accordance with § 257.64(b)(4); and

(6) Any other information that the Secretary determines necessary.

(b) The State IV-A agency shall submit its report to the Secretary no later than 90 days after the end of the federal fiscal year.

(c) The State IV-A agency shall make the report available for public inspection within the State and shall provide a copy of each report, on request, to any interested public agency.

§ 257.60 Availability of funding.

(a) A State agency is entitled to payments if it has an approved State At-Risk Child Care plan. The payments are available only for the allowable expenditures of the program.

(b) For American Samoa, Guam, Puerto Rico, and the Virgin Islands, funding under this part is subject to the funding restrictions established under section 1108 of the Social Security Act.

(c)(1) A State's limitation is the State's share of the national total of available funds for a fiscal year based on the same ratio as the number of children under 13 residing in the State is to the national total of children under 13.

(2) The number of children under 13 for the States is derived from the best data available to the Secretary for the second preceding fiscal year, or for the Territories, if data is not available from the second preceding fiscal year, the best data available for the closest fiscal year prior to the second preceding fiscal year.

(d) The difference between the amount paid to a State in a fiscal year and the State's limitation as defined in paragraph (c) of this section for that same fiscal year may be added to a State's limitation for the following fiscal year. The total amount available in a fiscal year is referred to as a State's maximum grant for that year.

§ 257.61 Grant awards.

(a) States are required to submit estimates and report expenditures on a quarterly basis. Adjustments in subsequent quarters' grant awards will be made to reflect over- and under-estimates in prior quarters' expenditures.

(b) The total amount paid to a State in a fiscal year may not exceed the State's limitation or maximum grant for the fiscal year, whichever is appropriate.

(c) The regulations pertaining to State estimates and expenditures at § 201.5 of this chapter and the timely filing of claims at part 95, subpart A of this title apply to expenditures under this part.

§ 257.62 Matching requirements.

(a) Federal financial participation (FFP) is available at the Federal Medical Assistance Percentage (FMAP) rate for expenditures made in providing child care services and in administering the At-Risk Child Care program.

(b) Expenditures for the program will be matched at the FMAP rate applicable for the fiscal year in which the expenditures are claimed.

(c) A State's share of expenditures must be in cash and may include public and private funds.

(1) Public funds may be considered as the State's share in claiming FFP when the funds are:

(i) Appropriated directly to the State or local IV-A agency, or transferred from another public agency (including Indian tribes) to the State or local IV-A

agency and under its administrative control or certified by the contributing public agency as representing expenditures eligible for FFP;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(2) Funds donated from private sources may be considered as the State's share in claiming FFP when the funds:

(i) Are transferred to the State or local IV-A agency and under its administrative control;

(ii) Are donated without any restriction which would require their use for assisting a particular individual or organization or at particular facilities or institutions; and

(iii) Do not revert to the donor's facility or use.

(3) An amount equal to any funds received which do not meet the conditions of paragraphs (c) (1) and (2) of this section must be deducted from the State's expenditure claims subject to Federal matching.

(4) In-kind contributions may not be used.

(d) For American Samoa, Guam, and the Virgin Islands, the first \$200,000 in the Territory's share of expenditures in a fiscal year is waived.

§ 257.63 Allowable expenditures.

(a)(1) FFP is available for the actual cost of child care, but not for more than the applicable local market rate.

(2) The applicable local market rate must be determined in accordance with the provisions of § 255.4(a)(2) and (a)(3) of this chapter.

(b) The State agency may establish a statewide limit.

(1) The statewide limit may be the same as the statewide limit(s) established at § 255.4(a)(1) of this chapter or may be a higher or lower amount, but shall not be lower than the amount of the child care disregard at § 233.20(a)(11)(i) of this chapter;

(2) The State may specify a higher statewide limit for children with special needs.

(c) FFP is available for expenditures made in administering the provision of child care services under this part. FFP is not available for costs associated with the recruitment or training of child care providers, resource development, or licensing activities.

§ 257.64 Non-supplantation.

(a) Amounts expended by the State IV-A agency for child care under this part shall not be used to supplant any

other Federal or State funds used for child care services.

(b)(1) The State must determine the separate amounts of Federal and State (including local funds used as the State share of other title IV-A child care expenditures) funds expended during a base period (as defined in paragraph (b)(2) of this section) and during subsequent periods for child care services. States must assure that the amount of funding from other sources for each subsequent period is maintained at the level of effort established for the base period.

(2) The base period is a twelve-month period (e.g., the State fiscal year) which includes the month one year prior to the first month for which the State has either an approved interim application or approved final plan for the At-Risk Child Care program. Subsequent periods are each twelve-month period following the preceding period. States may establish base period(s) and associated levels of effort on:

(i) A level of government basis (e.g., Federal or State); or

(ii) An alternative basis that provides for fiscal accountability.

(3) The separate amounts of Federal and State expenditures established for the base period must be included in the State's At-Risk Child Care plan, in accordance with § 257.21(d).

(4) The separate amounts of Federal and State expenditures for each subsequent period shall be reported to the Secretary in the State's annual report, in accordance with § 257.50(a)(5).

§ 257.65 General administrative requirements.

The provisions of part 74 of this title (with the exception of subpart G, Matching and Cost Sharing, and subpart I, Financial Reporting Requirement) establishing uniform administrative requirements and cost principles shall apply to the At-Risk Child Care program.

§ 257.66 Financial reporting.

(a) State estimates and expenditures will be reported on the financial reporting form for expenditures made under title IV-A.

(b) Contributions made by families for the cost of care where the State has made a full payment to the provider will be reported as program income and will be used to offset expenditures claimed as child care services payments. The requirements at § 74.42(c), subpart F of this title apply.

§ 257.67 Cost allocation.

A State agency shall amend its cost allocation plan to include the costs of the At-Risk Child Care program, in accordance with the regulations at part 95, subpart E of this title.

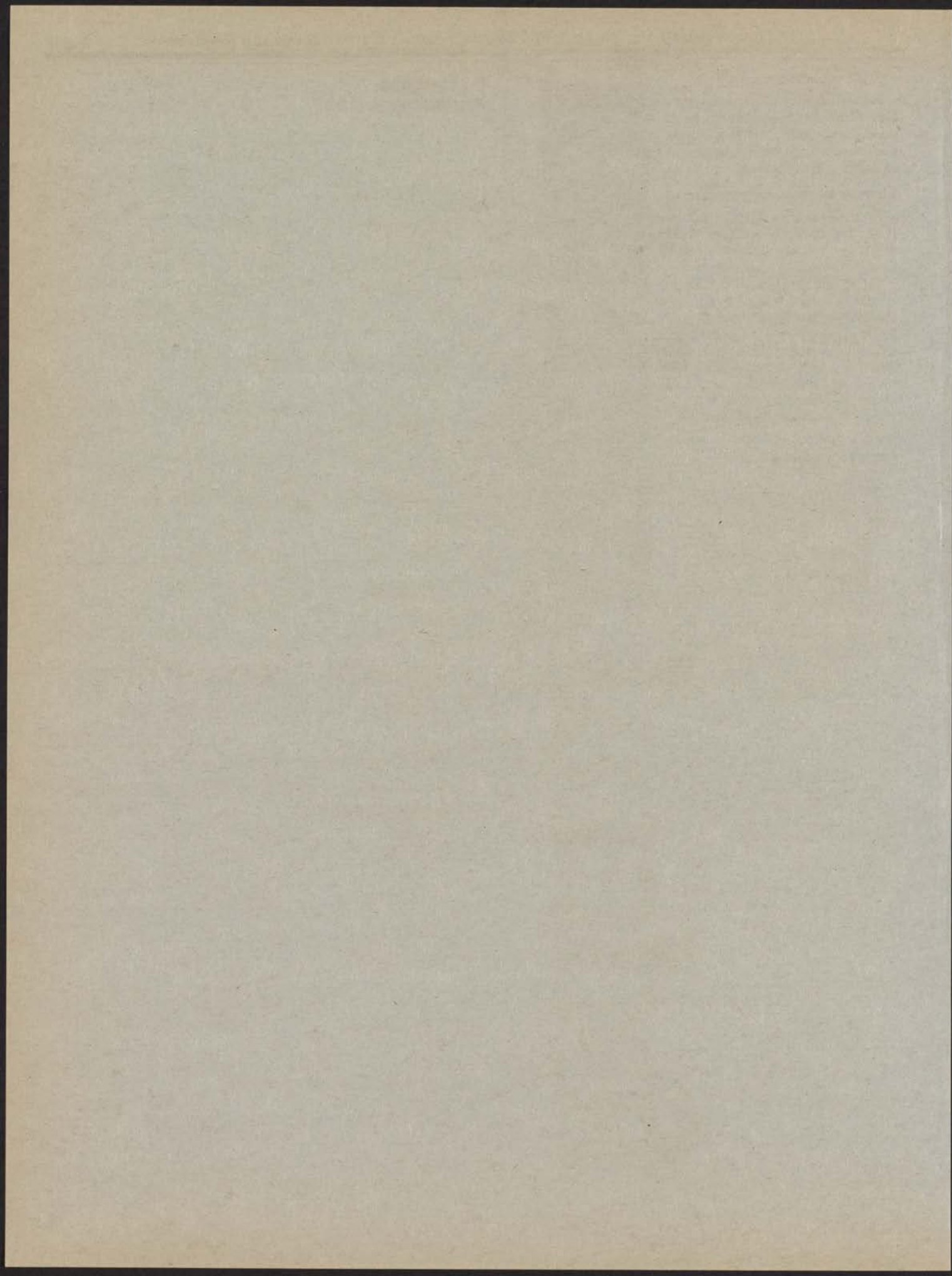
§ 257.68 Disallowance procedures.

(a) Federal financial participation (FFP) improperly claimed for child care services or administration are subject to disallowance.

(b) The deferral and disallowances regulation at § 201.15 of this chapter shall apply to this program. If the State IV-A agency disagrees with the decision to disallow FFP, it can appeal under existing title IV-A procedures, including review of the Departmental Appeals Board, in accordance with the regulations at part 16 of this title.

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Federal Register

**Tuesday
August 4, 1992**

Part IV

General Accounting Office

**Study of Payment Protections for
Subcontractors and Suppliers on Federal
Projects; Notice**

GENERAL ACCOUNTING OFFICE**Study of Payment Protections for Subcontractors and Suppliers on Federal Projects**

AGENCY: General Accounting Office.

ACTION: Notice of solicitation of information from subcontractors.

SUMMARY: The General Accounting Office (GAO) has developed a questionnaire to:

- (1) Identify delayed payment problems experienced by subcontractors, suppliers or materialmen working on subcontracts funded by Federal contracts and
- (2) Obtain opinions on the desirability of various proposals to improve the timeliness of payments due to subcontractors working on projects funded by Federal contracts. (See Part E of the questionnaire that is shown below for the specific proposals.) GAO invites any subcontractor to complete and return the questionnaire if a subcontract payment was delayed in fiscal year 1991 beyond a period which was either specified in the subcontract or accepted as normal for these types of subcontracts. All questionnaires submitted will be used for statistical purposes only, and not for purposes of identifying individual contractors, subcontractors or subcontractor complaints. Information provided in the questionnaire will be treated as

confidential by GAO. The questionnaire appears at the end of this Notice. Reproductions of the questionnaire made on photocopy machines are acceptable.

DATES: Completed questionnaires must be submitted by September 15, 1992.

ADDRESSES: Completed questionnaires should be returned to Mr. Ralph Dawn, United States General Accounting Office, 441 G Street NW., room 5015, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Dawn or Ms. Edna Thea Falk at (202) 275-8465.

SUPPLEMENTARY INFORMATION:

Background. Some payment protections for subcontractors currently exist in Federal contracting. Federal regulations for Federal construction contracts, for example, require prime contractors working on construction projects to:

- (1) Include in their subcontracts a payment term requiring payment within seven days after receiving payment from the Federal Government and
- (2) Certify to the Federal Government that their subcontractors have been and will be paid in a timely manner.

Congress held hearings on subcontractor payment issues in April 1991. Subsequently, Congress included the requirement for GAO to conduct a study in section 806 (e) of Public Law 102-190, the National Defense Authorization Act for Fiscal Years 1992

and 1993. The study requests GAO to evaluate the feasibility and desirability of several proposed payment provisions listed in section 806. GAO is required to submit a report to Congress by February 1, 1993.

Contacting Subcontractors. GAO is soliciting information from subcontractors through the **Federal Register** because a complete database on subcontractors working on Federal projects does not exist. GAO also has asked various trade organizations to distribute the questionnaire in order to obtain information from their constituents. This method of data collection will not allow GAO to specify the extent of payment problems experienced by subcontractors working on Federal contracts. Although you may have received several copies of the questionnaire from different sources, you are requested to complete only one copy for your firm.

Confidentiality. Information provided in response to GAO's questionnaire will be treated as confidential. Study results will be reported in statistical summaries in which the responses of individual business firms cannot be identified.

Effect on CFR. This Notice is not a proposed change in current regulations.

The questionnaire follows:

Paul F. Math,

Director, Research, Development, Acquisition and Procurement Issues, National Security and International Affairs Division.

BILLING CODE 1610-01-M

REQUEST FOR INFORMATION ABOUT DELAYED PAYMENT PROBLEMS FOR SUBCONTRACTORS UNDER FEDERAL CONTRACTS IN 1991

The United States General Accounting Office (GAO), an agency of the Congress, is studying subcontractor payment procedures as part of a congressional assessment of federal contracting legislation. Part of our study concerns delays which subcontractors have experienced in receiving payments from contractors on work funded by federal contracts. If you have had a *delayed payment*, as defined below, we encourage you to complete this questionnaire. Information provided in the questionnaire will be treated as confidential by GAO. Study results will only be reported in statistical summaries in which the information from individual firms can not be identified.

Completed questionnaires should be returned to:

Mr. Ralph Dawn
US General Accounting Office
Room 5015
441 G Street NW
Washington, D.C. 20548

Any inquiries about the study should be directed to Mr. Ralph Dawn or Ms. Edna Falk (202-275-8465).

DEFINITION OF DELAYED PAYMENTS WHICH ARE ELIGIBLE FOR THIS STUDY ⁽⁸⁻¹⁰⁾

Return this questionnaire ONLY if you answer "YES" to these three questions. (Mark the correct answers)	Eligible (1)	Not eligible (2)
a. Were you a subcontractor, supplier, or materialman in Fiscal Year 1991 (your firm's FY-91) on at least one subcontract that is funded by a federal contract?	<input type="radio"/> Yes	<input type="radio"/> No
b. Were you owed payments at any time in FY-91 on such a contract?	<input type="radio"/> Yes	<input type="radio"/> No
c. Was the payment on at least one such subcontract delayed beyond a period which was either specified in your subcontract, identified as your due date or accepted as normal for these types of contracts?	<input type="radio"/> Yes	<input type="radio"/> No

DEFINITION OF TERMS:

Accrued revenue: revenue earned in a period without regard to the timing of related cash receipts.

Subcontractor: This includes suppliers and materialmen as well as other subcontractors.

Small Disadvantaged Business Concern: a firm which is

eligible for the Small Business Administration's 8(a) program established by Section 8(a) of the Small Business Act, 15 U.S.C. 637(a) and defined in Federal Acquisition Regulation (FAR) 19.001.

Small Business Concern: a Small Business Concern as defined in 13 CFR Part 121, incorporated in FAR 19.102.

Commercial product: an item, material, component, subsystem, or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (FAR 11.001).

PART A: BACKGROUND ON YOUR FIRM

- What is the complete name of your organization? (If you are reporting for only a part of a larger company, please also specify the division name.)

- Whom should we contact if we have further questions or need to request supporting documentation?
Name: _____
Position: _____
Telephone: () _____
Date: _____
- Was most of your firm's FY-91 income from work classified as construction? (Mark the correct answer.) ⁽¹¹⁾
1 ☐ Yes
2 ☐ No
- How is your firm classified by federal regulations? [NOTE: Terms are defined at the beginning of the questionnaire] ⁽¹²⁾
1 ☐ Small, Disadvantaged Business (Section 8a)
2 ☐ Other Small Business Concern
3 ☐ Other business (large)

PART B: FINANCIAL DATA FOR YOUR FISCAL YEAR 1991

(Use your firm's Fiscal Year 1991 in this questionnaire. Accrued revenue is defined above.) ⁽¹³⁻³²⁾

- Divide your total FY-91 revenue between amounts:
\$ _____ Accrued as prime contractor on federal contracts
\$ _____ Accrued as a subcontractor on federal contracts
\$ _____ All other sources
\$ _____ TOTAL (FY-91 Total gross revenue)

- 6 Please divide the total value of the *delayed payments* (i.e. aging receivables) for income accrued in FY-91 as a subcontractor on federal contracts between the following: (53-72)
- \$ _____ Aged receivables--payment still NOT received
- \$ _____ Aged receivables--payment received
- 7 Approximately how much of your Total Gross Revenue in FY-91 was from sales of "commercial products" on federal contracts or subcontracts? (Enter "0" if none) [NOTE: "Commercial product" is defined at the beginning of the questionnaire.] (73-82)
- \$ _____
- 8 Please check (✓) all of the following actions, if any, which your firm has ever taken to obtain any of your FY-91 *delayed payments* on a subcontract supported by a federal contract. (Check ✓ all that apply) (8-17)
- ☐ Formally notified your contractor in writing that the payment was overdue (e.g. sent past-due notice)
- ☐ Requested federal agency officer to assist in obtaining payment from your contractor
- ☐ Filed a notice under the Miller Act (Construction only)
- ☐ Filed a suit in court
- ☐ Sought resolution through arbitration or mediation
- ☐ Stopped work with contractual authority
- ☐ Stopped work without contractual authority
- ☐ Collected interest under the terms of your subcontract
- ☐ Other (Please describe) _____
- ☐ Not taken any action

PART C: MOST SEVERE SUBCONTRACTOR DELAYED PAYMENT PROBLEM IN FY-91

NOTE: This section concerns ONLY the single FY-91 *delayed payment* subcontract which had the greatest financial impact on your firm in FY-91 and was funded by a federal contract.

- 9 What was the award date for the single subcontract (funded by a federal contract) with the *delayed payment* problem which had the greatest financial impact on your firm in FY-91? (18-23)
- ____ (Month) ____ (Day) ____ (Year)
- 10 What was your position on this subcontract in relation to the federal prime contractor? (24)
- 1 ☐ 1st tier subcontractor
- 2 ☐ Other tier (Specify) _____
- 3 ☐ Not known
- 11 Is this subcontract supporting a single federal contract, multiple federal contracts, both federal and non-federal contracts, or don't you know? (25)
- 1 ☐ Single federal contract ⇒ What is the federal government prime contract number (if known)? _____
- 2 ☐ Multiple federal contracts
- 3 ☐ Both federal and non-federal contracts
- 4 ☐ Not known
- 12 Was the major federal prime contract in the previous question classified as a construction contract? (26)
- 1 ☐ Yes
- 2 ☐ No
- 3 ☐ Don't know
- 13 What is the complete name of the firm to which you were a subcontractor for this work (i.e. Question #9 subcontract)? (If it is a part of a larger company, please specify the company and division name.) _____
- 14 How is the firm in the previous question classified by federal regulations? [Terms are defined on page 1.] (27)
- 1 ☐ Small, Disadvantaged Business (Section 8a)
- 2 ☐ Other Small Business Concern
- 3 ☐ Other business (large)
- 15 Please divide all invoices/requisitions submitted during this subcontract (from start date of contract through end of FY-91) by payment status. (Approximate values are adequate)
- PAYMENT RECEIVED: (28-47)
- \$ _____ Delayed (received after due date)
- \$ _____ Not delayed (received by due date)
- PAYMENT NOT RECEIVED: (48-77)
- \$ _____ Delayed (not received by due date)
- \$ _____ Not delayed (not yet reached due date)
- _____ TOTAL (ALL invoices submitted from beginning of contract to end of FY-91)

PART D: CHRONOLOGY FOR A SINGLE DELAYED PAYMENT

NOTE: This section concerns ONLY the single most important *delayed payment* (i.e. SINGLE invoice or requisition) under the subcontract (i.e. Question #9 subcontract) which had the greatest financial impact on your firm in FY-91.

16 Provide the following dates for the single most important <i>delayed payment</i> (i.e. single invoice or requisition) under this subcontract (i.e. Question #9 subcontract) (Check "Do not know" if date is not known.)		Date			Do not know (✓) ₈
		Month	Day	Year	
a. Submission of your invoice/requisition (8-14)				19__	
[Answer Question "b." if you are a 2nd tier or lower subcontractor =>]	b. Payment received by your immediate contractor (Approximate date. If unknown check ✓ "Do not know".) (15-21)			19__	
c. Date from which you considered the payment to be <i>delayed</i> (i.e. beginning of <i>delayed payment</i> period) (22-28)				19__	
d. Payment received by you (If not received, write "outstanding".) (29-35)				19__	

17 Was the date from which you considered the payment to be delayed in Question 16.c determined by... (36-39)	(Check correct answer)	
a. Payment terms specified in your subcontract	1 <input type="radio"/> Yes	2 <input type="radio"/> No
b. Payment terms specified on your invoice/purchase order	1 <input type="radio"/> Yes	2 <input type="radio"/> No
c. Customary practices in your industry	1 <input type="radio"/> Yes	2 <input type="radio"/> No
d. Other (Describe) _____	1 <input type="radio"/> Yes	2 <input type="radio"/> No

18 At the time of the delay, was your request for payment challenged by your contractor?

- 1 ☐ Yes
2 ☐ No

(40)

19 Has the prime contractor received payment from the federal government for that single invoice/requisition?

- 1 ☐ Yes => Approximately when did the prime contractor receive payment (if known)? _____
2 ☐ No
3 ☐ Do not know
(Month/Day/Year)

(41-47)

20 To what extent, if at all, was a delay by the government in paying the prime contractor responsible for your payment being delayed?

- 1 ☐ totally
2 ☐ almost totally
3 ☐ partially
4 ☐ slightly
5 ☐ not at all

(48)

PART E: EVALUATIONS OF PROPOSED PROVISIONS CONCERNING SUBCONTRACTOR RELATIONSHIPS

DIRECTIONS: Please answer Questions 21 and 22 for each of the possible payment protection provisions described below.

Possible payment protection provisions which GAO was asked by the Congress to evaluate.

QUESTION 21
Would this have prevented or resolved the *delayed payment* problem described in Question 16?

QUESTION 22
Would you favor, conditionally favor or oppose applying this provision to your contracts and subcontracts?
(If "Conditionally favor": Please describe conditions)

PART I: QUESTIONS FOR ALL

	(1)	(2)	(3)	(1)	(2)	(3)	(4)
i. <i>For periodic and progress payment contracts:</i> the prime contractor must establish an escrow account and require disbursements by the escrow agent to subcontractors of amounts certified by the prime contractor in invoices to the federal government as being payable to such subcontractors (49-50)	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not known	<input type="radio"/> Favor	<input type="radio"/> Conditionally favor (Describe)	<input type="radio"/> Oppose	<input type="radio"/> Not know
ii. <i>For periodic and progress payment contracts, if a government contracting officer determines the prime is repeatedly not making timely payments:</i> a method must be established for direct disbursements to subcontractors of amounts certified by the prime contractor in invoices to the federal government as being payable to such subcontractors (51-52)	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not known	<input type="radio"/> Favor	<input type="radio"/> Conditionally favor (Describe)	<input type="radio"/> Oppose	<input type="radio"/> Not know
iii. Prime contractor must furnish or provide payment bonds to ensure TIMELY and ultimate payment to subcontractors (53-54)	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not known	<input type="radio"/> Favor	<input type="radio"/> Conditionally favor (Describe)	<input type="radio"/> Oppose	<input type="radio"/> Not know
iv. Prime contractor may substitute letters of credit in instances in which payment bonds are required (55-56)	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not known	<input type="radio"/> Favor	<input type="radio"/> Conditionally favor (describe)	<input type="radio"/> Oppose	<input type="radio"/> Not know

PART II: QUESTIONS FOR PERIODIC OR PROGRESS PAYMENT, NON-CONSTRUCTION CONTRACTS

v. Prime contractor must: (1) include a clause in subcontracts requiring payment to subcontractors within a fixed time period after receiving payment from the government, and (2) certify with each invoice to the government that past payments have been made to the subcontractor on time and that payments under this invoice will be on time (57-58)	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not known	<input type="radio"/> Favor	<input type="radio"/> Conditionally favor (Describe)	<input type="radio"/> Oppose	<input type="radio"/> Not know
PREPAYMENT REQUIRED vi. Prime contractor must have paid and submitted proof of payments to subcontractors before invoicing the government for those payments (59-60)	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not known	<input type="radio"/> Favor	<input type="radio"/> Conditionally favor (Describe)	<input type="radio"/> Oppose	<input type="radio"/> Not know

PART III: QUESTION FOR CONSTRUCTION CONTRACTS

vii. <i>If payment bonds are now required under the Miller Act:</i> a prime contractor must increase the bond to 100% of the amount of the contract (61-62)	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not known	<input type="radio"/> Favor	<input type="radio"/> Conditionally favor (Describe)	<input type="radio"/> Oppose	<input type="radio"/> Not know
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United States Federal Register

Tuesday,
August 4, 1992

Part V

Department of Education

Special Projects and Demonstrations for
Providing Vocational Rehabilitation
Services to Individuals With Severe
Handicaps; Notice

DEPARTMENT OF EDUCATION

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1993.

SUMMARY: The Secretary proposes priorities for fiscal year 1993 under the program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps. The Secretary takes this action to focus Federal financial assistance on areas of identified national need. These priorities are intended to expand or improve vocational rehabilitation services for individuals with severe handicaps.

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Ann Queen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3038, Switzer Building, Washington, DC 20202-2575.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315 Switzer Building, Washington, DC 20202-2649. Telephone: (202) 732-1396. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: Grants under the program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps are authorized by section 311(a)(1) of title III of the Rehabilitation Act of 1973, as amended. The purpose of this program is to award grants for special projects and demonstrations that hold promise of expanding or otherwise improving rehabilitation services to individuals with severe handicaps.

This document contains four proposed priorities designed to further the purpose of the program. The reasons for the Secretary's choice of these priorities for funding in fiscal year 1993 are discussed in the respective background sections of each priority.

This program supports AMERICA 2000, the President's strategy for helping the Nation move toward achievement of the National Education Goals as well as the President's National Drug Control Strategy. By encouraging the

development of vocational rehabilitation strategies designed to increase the vocational potential of individuals with disabilities, these priorities support National Education Goal five. This goal calls for every adult American to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final priorities in a notice in the *Federal Register*. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the *Federal Register* concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one or more of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one or more of these absolute priorities:

Proposed Priority 1—Model Systems of Collaboration To Assist in the Training and Employment of Individuals Who Are Disabled Due to the Abuse or Drugs Other Than Alcohol

Background

According to the National Institute on Drug Abuse, about six percent of the population use drugs. Several studies suggest that the rate of drug abuse among individuals with disabilities is approximately twice that of the general population ("Adapting the Vocational Evaluation Process for Clients with a Substance Abuse History," *Journal of Applied Rehabilitation Counseling*, Volume 21, Number 3, 1990). As the number of individuals abusing drugs has grown, so has the number of these individuals both served and rehabilitated by State vocational rehabilitation (VR) agencies.

Available research studies suggest that substance abuse poses significant and unique challenges to rehabilitation practitioners due to the individual's denial of the impact of the abuse; the

lack of available comprehensive support mechanisms thought necessary for any lasting rehabilitation; the need for collaboration among the diverse agencies involved with the individual; the diminished motivation and capacity of the individual to participate in a rehabilitation program; and the reluctance of employers to hire these individuals ("Job Placement Strategies with Substance Abusers," *Journal of Job Placement*, Volume 6, Number 2, 1990).

In addition, many rehabilitation practitioners who lack extensive experience in working with individuals who abuse drugs may not recognize the subtle, yet important, signs connected with the disability, thus impairing any rehabilitation effort ("Dual Diagnosis: Psychiatric Disorder and Substance Abuse," *Journal of Applied Rehabilitation Counseling*, Volume 19, Number 2). One effort to enhance the skills of rehabilitation practitioners is published in the *Rehabilitation Continuing Education Program Consortium (RCEP) Vocational Rehabilitation of Drug-Free Youths (14-18): A State/Federal Rehabilitation Services Administration and Juvenile Justice Training Initiative—Twelve Training Modules for Rehabilitation Service Providers* (George Washington Regional Rehabilitation Continuing Education Program, January 1992). The training modules were developed by the RCEPs as a product of collaboration between the Rehabilitation Services Administration of the U.S. Department of Education and the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice.

To prepare for the anticipated continued increase of referrals to State VR agencies of individuals who have abused drugs, it is necessary to identify effective rehabilitation interventions that can be used by rehabilitation practitioners in working with this increasing and challenging population. The Secretary is particularly interested in projects that incorporate widely accepted service delivery approaches such as: (a) Traditional 12-step programs or other strong on-going support strategies such as mentoring; (b) involvement of family, friends, volunteers, co-workers, or service providers as natural supports throughout the rehabilitation process; (c) collaboration among relevant agencies, such as rehabilitation service providers, law enforcement agencies, and drug treatment programs in the formulation, implementation, and evaluation of rehabilitation programming; (d) training in social effectiveness, decision-making skills, self-esteem, and assertiveness;

and (e) crisis intervention mechanisms that can be employed swiftly and effectively during periods of relapse.

Because of the particular issues involved in serving individuals who abuse drugs, the Secretary is especially interested in projects that focus on drug abuse other than alcoholism.

Priority

Projects must demonstrate service delivery interventions that will assist individuals who have abused drugs (other than alcohol) and who have, as a result of that abuse, a substantial handicap to employment in preparing for, obtaining, and maintaining suitable employment consistent with their capacities and abilities. These strategies must be implemented after successful completion of the acute treatment phase of the recovery process.

Each project must show evidence of coordination with appropriate community resources serving individuals who abuse drugs other than alcohol. Each project must disseminate widely the practices and materials it develops to facilitate the capacity of other agencies and facilities to provide improved services to individuals who are disabled due to the abuse of drugs other than alcohol.

Proposed Priority 2—Functional Assessment of Individuals With Cognitive Disabilities

Background

Within the past decade there has been a dramatic increase in the number of individuals with severe cognitive disabilities, such as learning disabilities, traumatic brain injury, mental retardation, and severe mental illness, who are seeking vocational rehabilitation services. Because cognitive disabilities are often hidden, the manifestations of these disabilities and their impact on employment are difficult to ascertain and to quantify.

Traditional assessments, such as neuropsychological assessments, are effective in identifying the broad range of deficits that may result from a cognitive disability. However, these assessments do not show how the individual's deficits might interact with task and environmental demands and, thus, impact on the individual's ability to function in employment and employment-related situations ("Neuropsychological Rehabilitation: Treatment of Errors in Everyday Functioning," The Neuropsychology of Everyday Life: Issues in Development and Rehabilitation, 1990).

Functional assessment differs from more traditional assessments by

focusing on how individual limitations and strengths interact with the demands of living, working, and learning environments ("Rehabilitation Programming with Adults Who Have Specific Learning Disabilities," unpublished paper, National Institute on Disability Rehabilitation Research State of the Art Conference on Rehabilitation Services to Persons with Specific Learning Disabilities, 1987). Situational work assessments and job site evaluations, for example, are effective in determining how an individual's strengths and limitations match with job tasks and with varying environmental demands, such as the level of distractions, type and nature of supervision, job structure, and the type and amount of job-related interactions with others.

Functional assessment used systematically throughout the vocational rehabilitation process generates more useful and vocationally relevant information, leading to improved vocational outcomes for individuals with cognitive disabilities.

The Secretary also proposes to fund a Rehabilitation Short-Term Training project in FY 1993 that will train rehabilitation professionals and pre-service educators on functional assessment for individuals with cognitive disabilities. The Secretary will coordinate the oversight and administration of these projects to assure that rehabilitation professionals, educators, and related agencies and organizations derive the maximum benefits from these efforts to improve functional assessment of individuals with cognitive disabilities.

Priority

To improve vocational outcomes for individuals with cognitive disabilities, projects must—

(a) Use functional assessment to determine functional capacities in response to specific tasks and environmental demands related to those tasks; and

(b) Use the results of functional assessment throughout the vocational rehabilitation process from determinations of eligibility and severity of handicap through job placement and follow-up.

Each project must show evidence of coordination with appropriate community resources serving individuals with cognitive disabilities. Each project must disseminate widely the practices and materials it develops to facilitate the capacity of other agencies and facilities to provide improved functional assessments of individuals with cognitive disabilities.

Proposed Priority 3—Linkages Between State Vocational Rehabilitation Agencies and Consumer-Run Programs for Individuals With Severe Mental Illness

Background

Consumer-run programs for persons with severe mental illness are an outgrowth of the self-help movement and are based on the belief that consumers know best what their needs are and that persons who have experienced difficulties firsthand can offer effective support and assistance. Evaluation data that are available suggest that these consumer-run programs are effective alternatives for the provision of a wide array of services, including self-help and support services, crisis intervention, educational and vocational services, advocacy, and linkages with other service providers (Models of Community Support Services: Approaches to Helping Persons with Long-Term Mental Illness; Stroul, B., 1986).

Consumer-run programs for persons with severe mental illness may be uniquely suited for providing special services that facilitate successful employment outcomes. Examples of these services include: (a) Assisting consumers in developing the skills and knowledge necessary to manage their mental illness; (b) providing peer support and case management services; (c) assisting consumers in accessing services, such as supported housing; and (d) providing training for expanded employment options that reflect consumer preference.

Because consumer-run programs are playing an increasing role in the rehabilitation of persons with severe mental illness, they are an emerging resource that could be an asset to State VR agencies in achieving successful employment outcomes for this disability population. However, there are few examples of linkages between these consumer-run programs and State VR agencies.

There is a need for projects to improve linkages between consumer-run programs and State VR agencies and to integrate the services provided by consumer-run programs into the planning and provision of VR services provided by State agencies. Projects could be administered either by consumer-run programs or State VR agencies and could establish linkages in a variety of ways such as, but not limited to, joint project development, the establishment of cooperative agreements, or the development of memoranda of understanding.

Priority

Projects must demonstrate service models that will—

(a) Improve the linkages between State VR agencies and consumer-run programs for individuals with severe mental illness; and

(b) Develop strategies for integrating the services provided by consumer-run programs into the planning and provision of vocational rehabilitation and support services, including employment options that reflect consumer preference.

For purposes of this priority, a consumer is defined as an individual with a history of severe mental illness. A consumer-run program is defined as a program in which the major decision-making positions are held by individuals with severe mental illness.

Each project must show evidence of coordination with appropriate community resources serving individuals with a history of severe mental illness. Each project must disseminate widely the practices and materials it develops to facilitate the capacity of other agencies and facilities to provide improved services to individuals with severe mental illness.

Proposed Priority 4—Low-Functioning Adults Who are Deaf or Hard of Hearing

Background

The Commission on Education of the Deaf (February, 1988) identified low-functioning adults who are deaf or hard of hearing as an unserved sub-group within the population of persons who are deaf or hard of hearing. Due to communication barriers, low-functioning persons who are deaf are usually not able to benefit from conventional rehabilitation training programs and supported employment. Language limitations may preclude the use of interpreters for service and training program access. Even if interpreters can be used, the cost resulting from extended service needs tends to discourage the provision of these services.

Priority

Projects must provide vocational rehabilitation and other rehabilitation services, not adequately available in the geographic area proposed to be served, to maximize the vocational potential of low-functioning adults who are deaf or hard of hearing.

For the purposes of this priority, low-functioning refers to an individual (1) who is deaf or hard of hearing, and who may also have other disabilities; (2) whose functional level is substantially below that required for admission to postsecondary education or training programs; (3) whose language and communication skills are extremely limited; (4) who is not ready for employment; and (5) who does not have marketable work skills or a history of successful employment.

Projects must meet all of the following requirements:

(a) Coordinate with other public and nonprofit private agencies and organizations to address the postsecondary education, counseling, vocational training, work transition, supported employment, job placement, follow-up, and community outreach needs of low-functioning adults who are deaf or hard of hearing.

(b) Develop working relationships with existing vocational and educational programs for adult persons who are deaf, such as the Regional Postsecondary Education Programs for the Deaf (RPEPD) supported by the Department of Education.

(c) Coordinate with the Rehabilitation Research and Training Center on Traditionally Underserved Persons Who Are Deaf at Northern Illinois University and the Research and Training Center on Deafness at the University of Arkansas, and make available to these research and training centers for dissemination the results of the projects funded under this priority.

(d) Establish relationships with potential employers from the public and private sector and have access to community-based resources serving adults who are deaf (e.g., organizations of persons who are deaf, groups providing special activities for persons who are deaf, and employment settings where there are workers who are deaf).

(e) Involve individuals who are deaf and representatives of RPEPDs or other appropriate service programs for individuals who are deaf in the planning, implementation, operation, and evaluation of the project and dissemination of the project results.

(f) Provide technical assistance to facilities and agencies in areas such as outreach, using a coordinated approach to the delivery of services, and on-site training and workshops. The technical assistance must be designed to facilitate the wide dissemination of practices and

materials developed by the project and to facilitate the capacity of agencies and facilities to provide improved services to deaf or hard of hearing adults who are low-functioning.

In meeting the requirements of the selection criterion for quality of key personnel under this program (34 CFR 373.30(b)), the project staff under this priority must be experienced in the delivery of services, such as vocational evaluation, peer counseling, personal adjustment, job coaching, community-based instruction, and placement, to low-functioning adults who are deaf or hard of hearing. The staff must also be experienced in communicating with adult persons who are deaf and who have minimal language skills.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3315, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m., and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Parts 369 and 373.

Program Authority: 29 U.S.C. 777a(a)(1) and 777a(a)(4).

(Catalog of Federal Domestic Assistance Number 84.235 Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps)

Dated: July 29, 1992.

Lamar Alexander,
Secretary of Education.

[FR Doc-92-18350 Filed 8-3-92; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

**Tuesday,
August 4, 1992**

Part VI

Department of Education

**Dwight D. Eisenhower National Program
for Mathematics and Science Education—
Model Professional Development Program
in Mathematics or Science for
Elementary and Middle School Teachers,
Notice**

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower National Program for Mathematics and Science Education—Model Professional Development Program in Mathematics or Science for Elementary and Middle School Teachers**AGENCY:** Department of Education.**ACTION:** Notice of proposed priority for fiscal years 1993 and 1994.

SUMMARY: The Secretary proposes a priority for fiscal years 1993 and 1994 under the Dwight D. Eisenhower National Program for Mathematics and Science Education. The Secretary proposes this priority to prepare elementary and middle school teachers to teach coherent, nonrepetitive curricula in mathematics or science. The Secretary takes this action to focus Federal financial assistance on models for the professional development of teachers so that they can enable students to enter secondary schools motivated and prepared to take challenging courses in mathematics and science.

DATES: Comments must be received on or before September 3, 1992.**ADDRESSES:** All comments concerning this proposed priority should be addressed to Paul Gagnon, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208-5524.

FOR FURTHER INFORMATION CONTACT: Mary Sivertsen or Becky Wilt, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208-5524. Telephone: (202) 219-1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Dwight D. Eisenhower National Program for Mathematics and Science Education supports projects of national significance in mathematics and science instruction at the elementary and secondary levels. The program is authorized under Title II, Subpart 1, section 2012 of the Elementary and Secondary Education Act, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100-297.

The proposed priority in this notice supports one of the six National Education Goals which calls for U.S.

students to be first in the world in mathematics and science achievement by the year 2000. The President's AMERICA 2000 strategy for helping the Nation achieve the goals calls for the creation of world-class standards for student achievement in the five core subjects, including mathematics and science, and for a system of improved assessments tied to the standards.

The National Council for Educational Standards and Testing (NCEST), a congressionally created group of 32 individuals charged with investigating the desirability and feasibility of standards and improved assessments, issued its report in January 1992. The report called for the development of national standards and a national system of voluntary assessments as an urgently needed first step in reforming American education.

NCEST's Task Force on Standards reported that some States are aligning challenging standards with appropriate curricula and assessment methods. However, most of these efforts are very recent, and most do not yet tie the professional development of teachers to the more demanding curriculum and assessment strategies. The task force further reported that most public school teachers do not have the necessary level of understanding of subject matter required to teach curricula and courses tied to world-class standards, and that if world-class standards are to spur improved teaching and learning, the teachers will need reinforcement by extensive and carefully developed professional development activities. The Secretary believes that all teachers and administrators in a given school must be involved in these professional development activities to facilitate genuine and lasting school-level reform.

The Committee on Education and Human Resources of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET) has established teacher preparation and enhancement as its first priority at the precollege level. This priority is part of a larger FCCSET strategy to emphasize intensive teacher training efforts tied to world-class standards for mathematics and science.

The Secretary will announce the final priority in a notice in the Federal Register. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from

proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrently with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Model Professional Development Program in Mathematics or Science for Elementary and Middle School Teachers

The Secretary will fund projects in which experienced teachers of mathematics or science will provide professional development to prepare elementary and middle school teachers to teach a coherent, nonrepetitive curriculum in mathematics or science, or a combination of these disciplines. The curriculum must incorporate world-class standards and build student knowledge and skills, grade-by-grade, in stages appropriate to each grade level so that students enter secondary school motivated and prepared to take challenging courses in mathematics and science.

Each project must carry out all of the following activities:

(a) Establish a team of experienced mathematics or science teachers, or both, from one or more public or private schools within the geographic area of a school district.

(b) Include both scholars and educators from neighboring colleges and universities to work collaboratively with the team of experienced classroom teachers in planning and executing the project.

(c) Provide professional development at two or more public or private schools within the geographic area of a single school district (if that district has more than one such school) enrolling students of different backgrounds and different academic achievement.

(d) Provide professional development to all teachers and administrators involved in mathematics and science instruction in the given schools.

(e) Provide the equivalent of at least 20 full days of inservice education for each participant during the school year

including during the school day, after school, or on weekends.

(f) Provide to the Secretary a copy of the evaluation conducted under 34 CFR 75.590. Each project must participate in the evaluation of the program the Secretary plans to conduct.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local

governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue, NW., Washington, DC,

between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Part 755.

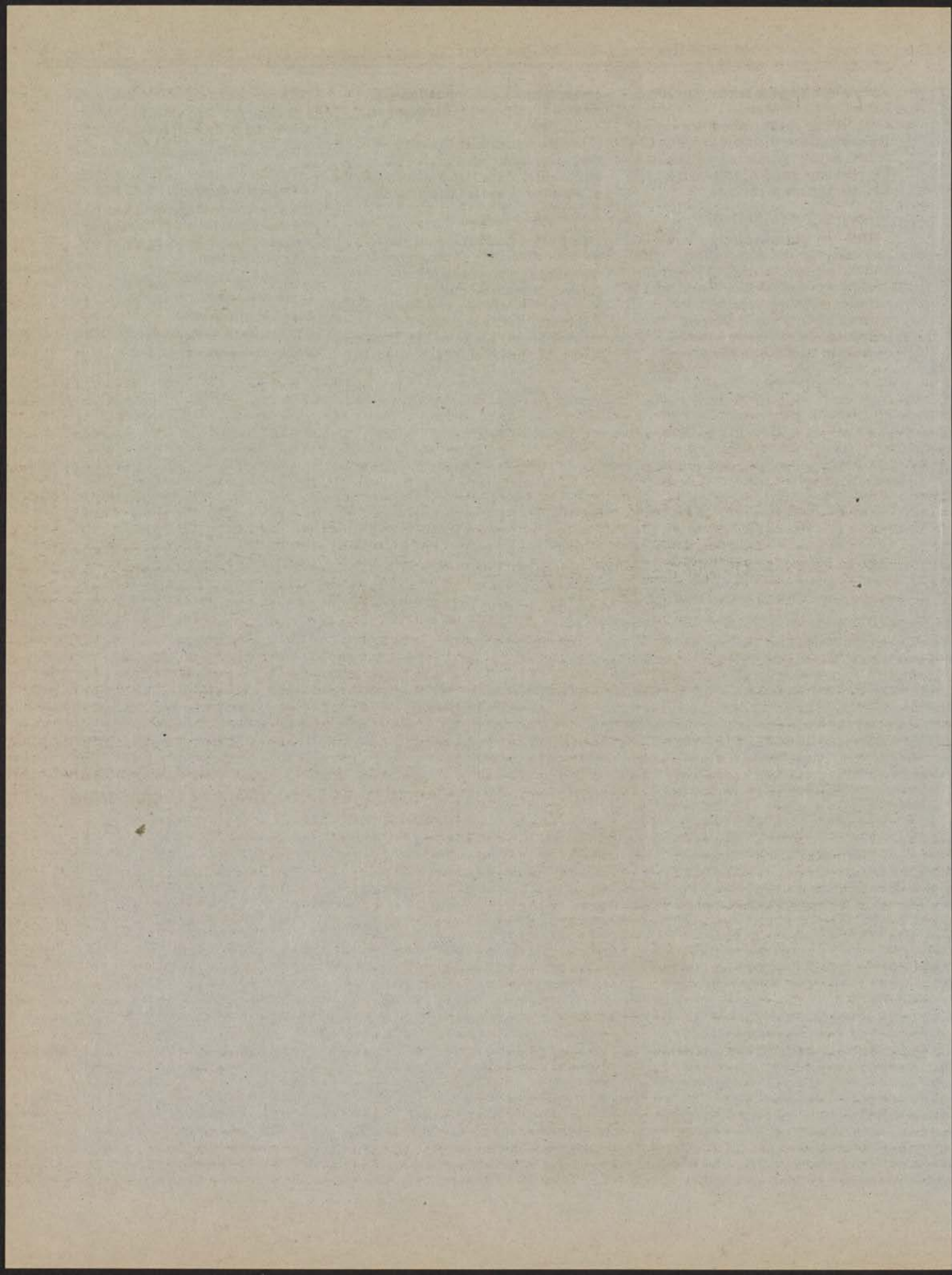
Program Authority: 20 U.S.C. 2992.
(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Program for Mathematics and Science Education)

Dated: July 29, 1992.

Lamar Alexander,
Secretary of Education.

[FR Doc. 92-18349 Filed 8-3-92; 8:45 am]

BILLING CODE 4000-01-M



Register

Tuesday
August 4, 1992

Part VII

Department of Education

Proposed Funding Priorities for Fiscal
Year 1993-94 Rehabilitation Engineering
Centers; Notice

DEPARTMENT OF EDUCATION

Proposed Funding Priorities for Fiscal Year 1993-94 Rehabilitation Engineering Centers**AGENCY:** Department of Education.**ACTION:** National Institute on Disability and Rehabilitation Research—Notice of proposed funding priorities for fiscal years 1993-94 for Rehabilitation Engineering Centers.**SUMMARY:** The Secretary of Education proposes funding priorities for new Rehabilitation Engineering Centers (RECs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993-94. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.**DATES:** Comments must be received on or before September 3, 1992.**ADDRESSES:** All comments concerning these proposed priorities should be addressed to Richard K. Johnson, Department of Education, 400 Maryland Avenue SW., room 3415, Switzer Building, Washington, DC 20202-2601.**FOR FURTHER INFORMATION CONTACT:** Richard K. Johnson. Telephone: (202) 732-1203. Deaf and hearing-impaired individuals may call (202) 732-1198 for TDD services or use the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m., Eastern Time.**SUPPLEMENTARY INFORMATION:** This notice contains 10 proposed priorities under the Rehabilitation Engineering Center (REC) program; each priority is for a separate Center to be established to meet the objectives stated in the priority. NIDRR has recently published one notice of proposed priorities for Rehabilitation Research and Training Centers and intends to propose additional priorities for fiscal years 1993-94 at a later date.

Authority for the REC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760-762). NIDRR regulations authorize the Secretary to establish priorities by reserving funds to support particular research activities (see 34 CFR 351.32).

Under the REC program the Secretary makes awards to public and private organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research programs that promote technological solutions to problems confronting

individuals with disabilities, develop systems for the exchange of technical and engineering information, and improve the distribution of assistive devices and equipment to individuals with disabilities. The statute provides that each REC must be located in a clinical setting. NIDRR encourages RECs to collaborate with institutions of higher education in the conduct of a program of research, scientific evaluation, and training that advances the state of the art in technology and its application.

In addition, NIDRR requires each REC to provide graduate-level research training to build capacity for engineering research in the rehabilitation field and to provide training in the applications of new technology to service providers and to individuals with disabilities and their families. Each REC must ensure that all training materials developed by the Center are presented in formats that will be accessible to individuals with various types of impairments.

Each Center shall participate in the evaluation of its own products and those of other Centers and develop cooperative arrangements with the private sector to produce and distribute its products. Any Center funded under these priorities shall coordinate activities and share information with other NIDRR-funded Centers and shall work closely with the Center on Technology Evaluation and Transfer, proposed in this notice.

Each REC shall involve individuals with disabilities—and, if appropriate, their family members—in planning and implementing the research, development, and training programs, in interpreting and disseminating the research findings, and in evaluating the Center. NIDRR encourages all Centers to involve individuals with disabilities and minorities in research training, as well as in clinical training.

Each REC shall conduct coordinated programs of research and development that will contribute to the desired outcomes specified in the priority. Within that priority area applicants have considerable latitude in proposing specific research approaches. However, the selection criteria in the regulations (34 CFR 353.31) require applicants to justify their choice of projects in terms of relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in assuring that

the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Applicants are rated according to how they plan to evaluate their performance under the grant. Not later than three years after the establishment of any REC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities. These goals are: (1) Full integration into the community, (2) full employment, (3) independence and empowerment, (4) maximum human functioning and health, (5) improved vocational rehabilitation services, and (6) the translation of new knowledge and technology into practice. The priorities proposed in this notice emerged from the long-range planning process and are the most important approaches to achieving one or more of these six outcomes.

These proposed priorities support National Education Goal five that calls for every adult American to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The proposed priorities also support the AMERICA 2000 agenda for transforming America into "a Nation of students."

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.**Note:** This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the notice of final priorities.**Priorities**

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one

of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priority 1—Adaptive Computers and Information Systems

Background

Knowledge production and information processing are accelerating at a rapid rate paralleling the advances in microcomputers and telecommunications. There is a danger that, in the future, information and knowledge will be exchanged at such a high volume and speed that individuals with disabilities will be handicapped on the job and in daily activities by the inaccessibility of computers and other electronic information processing devices. The purpose of the proposed Center is to assure that individuals with disabilities will have adequate accessible technology and technology interfaces to assist them to participate fully in the communication and rapid exchange of information that will be integral to the economy and lifestyle of the future.

Electronic information technology may be either an obstacle or a facilitator for individuals with a variety of disabilities, including those caused by sensory impairments, mobility impairments, communications impairments, and cognitive impairments. The specific adaptations needed vary by the type of disability, the residual function, and the characteristics and lifestyle of the individual.

Rehabilitation engineering knowledge can be applied to the development of such needed devices as: Adaptable electronic interfaces, both hardware and software; adaptable operator interfaces for facsimile (FAX) systems, TDDs, and photocopiers; devices to increase access by individuals with various types of disabilities to voicemail, interactive compact discs, videocamera recording and playback devices, and other radio and television electronic equipment currently on the market; hardware or software adaptations for electronic technology to allow persons with disabilities access to an increased number of independent activities in self-management and leisure; and computer-based speech recognition interface to accommodate speech variations for persons with disabilities.

Priority

The REC in adaptive electronics shall develop and evaluate new technologies, and, if appropriate, develop adaptations of existing technologies, that will—

- Assist individuals with various types of disabilities to manage their own lives and perform activities of daily living independently;
 - Enhance the capacities of individuals with various types of disabilities to produce and access information and to perform competitive work in the high technology environment of the future; and
 - Increase the availability of affordable adaptations to commercial electronic information devices.
- In addition, the REC shall develop strategies to increase the awareness of electronic adaptations on the part of employers and vocational rehabilitation service providers.

Proposed Priority 2—Augmentative and Alternative Communication Devices

Background

Augmentative and alternative communication (AAC) refers to all communication devices that supplement, augment, or substitute for speech. Just as typical communicators rely on augmentative and alternative expressive communication techniques, so do persons with communication disabilities. However, most individuals with speech and language impairments also have physical, sensory, or cognitive disabilities that may compromise their ability to use other augmentative communication strategies such as writing, gesture, and facial expression (Blackstone, 1986).

There are five major obstacles to achieving effective communication through AAC devices. These are: (1) Technical problems such as speed of message preparation and delivery, restricted lexicons (vocabularies), unique output modes such as synthesized speech, and difficulty of use; (2) gaps in the education and knowledge of professional service providers, researchers, manufacturers, consumers, their families, and communication partners; (3) attitudinal barriers that may inhibit augmentative communication users from fully participating in community life more than their actual impairments do (Beukelman, 1986); (4) environmental barriers that inhibit a free flow of information between communication partners (Blackstone, 1991); and (5) a dearth of communicative precedents, a history of expressive failure, and insufficient investigation of linguistic structure, use, and function due to gaps in research (Kraat, 1982).

Priority

The REC in AAC shall develop appropriate technology, and, if

appropriate, modify existing technology, to improve the communication abilities of children and adults with communicative disabilities and facilitate the transfer of appropriate devices into commercial production by conducting research that will—

- Increase understanding of the strengths and needs of individuals with communication disabilities through improved human factor and ergonomic information;
- Enhance capacity for daily communication in the work environment and the community;
- Enable individuals to develop, enhance, or regain language skills;
- Increase the availability of appropriate AAC devices; and
- Reduce environmental and societal barriers to effective interactive communication.

Proposed Priority 3—Hearing Enhancement and Assistive Devices

Background

According to the National Institute on Deafness and Other Communication Disorders, approximately 28 million Americans have some degree of hearing loss. Of this number, two million have no usable hearing and the remaining 90 percent have hearing impairments that range from mild to profound. In addition to persons with reduced hearing acuity and deafness, there is a rapidly increasing population of older individuals with impairments in sound discrimination and hearing that limit their performance in a wide variety of everyday tasks. Complicating factors include the increasing numbers of persons with other, often visual, impairments combined with auditory impairments, and the rising incidence of premature infants at risk for hearing impairment.

Although progress has been made in developing technology to enhance hearing, including advances in communication, educational and vocational aids, captioned television, auditory amplifiers, and improved functional hearing assessment, there is more to be done to make rapidly changing technologies accessible to deaf individuals.

The Commission on Education of the Deaf (1988) emphasized the need to improve the capability for early detection of hearing loss in infants. While there has been research in this area, technology for this purpose is primitive, and more research is necessary to identify and validate appropriate technology for early detection of hearing loss in infants.

Among adults, there are persistent and frequent objections to the high cost of hearing aids. The Nation's economy and the growing aging population dictate the need for cost-effective assistive devices and services to improve hearing. Simplified auditory evaluation of individual hearing loss and the selection and fitting of hearing aids are necessary, as are better and less costly hearing aids.

An REC in hearing enhancement and assistive devices can improve human functioning, community integration, employment, and empowerment by developing and refining technology for hearing evaluation; improving programming and fitting techniques; improving hearing aid manufacturing processes.

Priority

The REC in hearing enhancement and assistive devices shall develop and evaluate effective technology to—

- Improve early detection of hearing loss in infants, and perfect a prototype system for this purpose;
- Improve the assessment of progressive aural disorders associated with aging;
- Improve communication functioning in older persons with hearing loss;
- Improve the capacity of hearing aids for filtering, amplification, and discrimination, matching them to both the underlying impairment and the environment;
- Improve access to modern telecommunications for individuals who are deaf or hard-of-hearing;
- Develop and evaluate—in the potential user's environment, including worksites—specialized technology for job-site modifications for individuals with hearing impairments;
- Improve education and rehabilitation for individuals who have both severe hearing impairment and severe vision impairment;
- Improve assistive devices to amplify or visualize auditory signals in the community and in the work environment, so as to assist employers and other entities covered by the ADA to accommodate the needs of workers and others with hearing impairments;
- Increase the availability of cost-effective technological devices and services for individuals with hearing impairments; and
- Improve audiological measurement technology to enhance fitting of digital hearing aids.

In addition, the REC shall develop at least one commercially viable hearing aid systems package (e.g., diagnosis unit, personal aid, software, and training

manuals) that advances the state of the art.

Proposed Priority 4—Technology To Improve Wheelchair Mobility

Background

An estimated 1.2 million individuals are classified as paralyzed and a probable one million of these use wheelchairs to achieve mobility (National Center for Medical Rehabilitation Research, 1991). The most significantly limited individuals are those with spinal cord injuries (SCI) who are paralyzed from the C5–C6 level. Kraus (1986) estimated that of the 250,000 spinal cord injured persons in the nation at that time, about 100,000 were classified as C5–C6 or higher quadriplegic. Of the 8,000 to 10,000 SCIs that occur each year, 4,000 to 5,000 are at the level of C5–C6 or higher. This population must use powered mobility devices that are far more complex, costly, and cumbersome than conventional manual wheelchairs.

Despite the many recent improvements in wheelchairs, there remain several major deficits in the design and construction of wheelchair systems that can seriously compromise the mobility, safety, and integration into the workplace and community of those who depend on these systems, particularly persons with high-level quadriplegia. These major deficits are in the reliability of the power systems, the safety of the vehicular interfaces and securement systems, availability of interfaces with other mobility devices and environmental controls, and adequacy of seating and postural supports (Ragnarsson, 1990; Brubaker, *et al.*, 1991).

Wheelchair power systems—batteries of various types and control devices—remain inefficient, unreliable, expensive, and difficult to transport and maintain. Deficient seating systems—including cushions, postural supports, and restraints—may further compromise a wheelchair user's health or exacerbate the impairment, thus limiting the usability of the wheelchair. Appropriate seating systems can assist the individual to avoid musculoskeletal deterioration, pain, and decubitus ulcers, and enable him or her to use the chair to participate in time-intensive activities such as work, school, travel, or activities of daily living.

Increasingly, individuals who use wheelchairs expect to employ them in a wide range of daily activities, including independent living, parenting, and self-care. For individuals with high-level quadriplegia, there must be more attention to adapting wheelchairs to the

users' real-life needs, such as shopping, child care, work, recreation, personal hygiene, and housekeeping. Powered wheelchair controls could interface with other environmental controls to enable individuals with even high levels of quadriplegia to be more independent in their homes or workplaces.

Another equally serious problem limiting the true mobility of individuals who use wheelchairs is the absence of safe and reliable tie-down devices to secure wheelchairs in public or private vehicles. Although it is unsafe, wheelchair users, including children using school buses, do ride in public and private transportation with either no securement or inadequate securement. The Americans with Disabilities Act requires that all public and private transportation systems be made accessible; this should lead to an increase in the demand for safe transportation for wheelchair riders. The absence of standards for securement devices contributes to difficulties in protecting safety or establishing liability (National Highway Transportation Safety Administration, 1991).

While an REC cannot establish standards for an industry, it can conduct research and development activities and work closely with manufacturers, as well as wheelchair users, to evaluate products, to encourage industry to make new products available, and to provide improved technical understanding of factors contributing to wheelchair safety.

Priority

The REC in wheelchair mobility shall develop technologies to—

- Improve the mobility of individuals using power wheelchairs by developing more efficient, reliable, and maintainable wheelchair power systems;
- Improve the mobility of wheelchair users by developing wheelchairs that are stronger, lighter in weight, and easier to manufacture and maintain;
- Enhance the safety and mobility of wheelchair users by developing safe vehicle securement systems for various types of chairs and various types of vehicles, especially those used in mass transit; and
- Enhance the functioning of wheelchair users by developing improved seating systems and interfaces with environmental controls and other devices for daily living activities.

In addition, the REC shall identify criteria and standards for wheelchair performance and vehicle securement systems, in coordination with the Department of Transportation and the

Architectural and Transportation Barriers Compliance Board (ATBCB), and disseminate this information to potentially affected parties including consumers.

Proposed Priority 5—Worksite Modifications and Accommodations

Background

The Rehabilitation Act of 1973, as amended, specifies that NIDRR research shall have a special focus on the needs of individuals with the most severe disabilities. The passage of the Americans with Disabilities Act creates a new imperative for American employers and rehabilitation service providers to find cost-effective job modifications that will accommodate individuals with disabilities, including severe disabilities. Employers will be required to make "reasonable accommodations" that are not unduly burdensome to the business, to analyze jobs and hire people for them according to their ability to perform only the "essential functions" of the job, and to restructure jobs to accommodate workers with disabilities if this can be accomplished without undue hardship.

Rehabilitation engineering can contribute solutions such as modifications to the worksite or to other employer-provided facilities and adaptive devices to enhance individual functional capabilities. Techniques of engineering investigation can also be applied to analyze the functional abilities required by the "essential functions" of a job, to assess the potential of individuals with disabilities to meet those essential job requirements, and to design job restructuring patterns that would accommodate the needs of individuals with severe disabilities while not compromising the ability of the employer to meet the demands of his or her customers.

The REC in worksite modifications can assist in increasing the opportunities of persons with severe disabilities to obtain and maintain employment by developing technologies to eliminate physical barriers on the job and enhance the abilities of persons with disabilities to perform competitive work in industrial worksites of the future.

Priority

The REC in worksite modifications and accommodations, consistent with the regulations and policy guidance promulgated by the Equal Employment Opportunity Commission, shall develop—

- Modifications to current industrial equipment and innovative software to provide (1) interface capability with new industrial technological devices, and (2) new models of workstations to accommodate individuals with severe disabilities;

- Systems to identify "essential functions" of a job and methods to assess the capability of an individual with a severe disability to perform those essential functions;

- Job restructuring designs and other modifications to the components of the job that will constitute reasonable accommodations for individuals with severe disabilities;

- Techniques to accommodate or supplant an individual's need for personal assistance or other human supports while at the worksite;

- Techniques to assist vocational rehabilitation counselors to meet the needs of individuals with severe disabilities for worksite accommodations;

- Models of closer collaboration with school-to-work transition programs to ensure efficient application of available technology for facilitating employment for youth with severe disabilities; and

- On-site demonstrations of the efficacy of these techniques through cooperative relationships with one or more employers.

Proposed Priority 6—Employability for Persons With Low Back Pain

Background

The successful rehabilitation of persons with low back pain (LBP) is of major medical and socioeconomic importance. LBP, the most common musculoskeletal disorder, is also the single greatest trigger of workers' compensation payments and the second most common cause of work loss (Kelsey, *et al.*, 1980; Andersson, 1991). Epidemiologic studies demonstrate that more than 60 percent of all individuals will experience functional limitations from low back pain during their lives (Frymoyer, 1983).

The prevalence of low back pain is increasing, as is attendant disability. According to the National Center for Health Statistics, while back or spine problems (excluding spinal cord injury) are the third leading cause of impairment in the U.S. (affecting 11.7 million persons) they are the primary cause of disability, with 5.3 million of those impairments resulting in disability. Of the individuals with low back impairments, 79 percent are in the age group 17-64, the peak of productive, wage-earning years. The cost of LBP in the U.S. is estimated to exceed \$18

billion per year and is rising rapidly (Frymoyer *et al.*, 1983).

A relatively small subset of people with LBP—the 10 to 15 percent whose symptoms persist for more than three months—accounts for more than 80 percent of the costs associated with low back pain and injury. Frymoyer *et al.*, (1983) estimated the costs in lost earnings alone to be \$11 billion per year for males aged 18-55. In addition to the financial burden to individuals and society, low back impairment and disability severely restrict personal productivity and quality of life.

One of the single greatest problems in the rehabilitation of people with LBP is the absence of precisely defined objective etiologic and diagnostic criteria. Because accurate diagnosis is elusive, it is not surprising that treatment programs and rehabilitation efforts for those with LBP often fail, and the condition becomes chronic. Studies attest to the high failure rate in rehabilitation when disability extends more than six months. Those with long-term low back pain account for 80 to 85 percent of the work-loss costs and compensation payments (Frymoyer, *et al.*, 1983).

Modern treatment programs take a comprehensive approach to chronic, disabling LBP, emphasizing restoration of muscle strength and aerobic capacity, vocational assessments and short-term psychological intervention and support (Mayer, *et al.*, 1985). Mayer and co-workers reported that, one year after intervention, 86 percent of the individuals treated in a comprehensive program and 40 percent of the untreated individuals were working. A comparable successful return to work rate following a similar comprehensive rehabilitation program has been reported by others.

According to Wiesel (1982), once an individual has LBP, especially chronic LBP, the most important step is restoration of function and return to work. Thus, early return to work is the prime focus of this priority. If those at high risk for acquiring disability can be identified early in the course of their LBP episodes and can be maintained on the job or quickly returned to work, a chronic condition, with associated high costs in money and self-esteem, can be prevented, and the downward spiral leading to chronic unemployment can be reversed. Work-based interventions—with the employer, individual client, medical practitioner, and counselor sharing responsibility—show promise of success.

While there are many physical therapy and medical rehabilitation interventions, there has been far less

attention to technological factors in the work place that make return to work feasible for the worker who may suffer some painful limitation. Rehabilitation engineering can be applied to improve human functioning that will enable the individual to work and participate in regular community life. At the same time, the application of technology by an employer in adapting the work place to the individual needs of a returning employee can materially hasten the return to work and increase the likelihood of job retention in a number of different industries.

Priority

The REC to improve employment outcomes for individuals with functional limitations due to LBP shall—

- Develop and test assistive devices that will enhance human functioning to permit persons with LBP to maintain employment in various occupations;
- Develop and test technological systems and workplace adaptations for various specific occupations that will enable individuals with disabilities due to LBP to obtain and retain the level of employment sustained prior to the injury;
- Develop preventative measures, tailored to various occupations, to minimizing the risk of further aggravating LBP at the worksite;
- Develop and test models for effective technological applications and rehabilitation at the workplace, in partnership with cooperating employers; and
- Disseminate findings to State vocational rehabilitation agencies, Regional Disability and Business Technical Assistance Centers, and other service providers and employers, as well as individuals with low back impairments.

Proposed Priority 7—Prosthetics and Orthotics

Background

The National Health Interview Surveys of 1983-1985 reported that 28,000 Americans had upper extremity amputations, 142,000 had lower extremity amputations, and 63,000 had lost fingers, toes, or feet. Approximately two-thirds of the individuals in each category were over 45 years of age. Of the total amputees reported, 8,000 were children under 18. These numbers are relatively small compared to the total national population, and this low prevalence results in neglect by the private sector, necessitating Federal support of research, development, training, and distribution systems that serve amputees in America.

Some of these needs can be addressed by building additional capacity for scientific research and professional service provision in the field of prosthetics and orthotics (P&O). The practice of P&O has become much more complex as the number of components involved has expanded greatly in variety and function. Components are produced in six or seven different nations. Computer Aided Design/Computer Aided Manufacture (CAD/CAM) and Computer Assisted Engineering (CAE) are increasingly common technology that is reforming the P&O practice. As the profession becomes more specialized, practitioners need to become expert at fitting upper-limb myoelectrically controlled prostheses, at CAD/CAM, at fitting children, at fitting below-knee and above-knee prostheses, and at dealing with special areas of orthotics related to a particular kind of neuromuscular deficit.

While the discussion in this background section has focused on the problems of the practitioners, it is the amputee who suffers from inadequate care, prescription and fitting of devices, or quality of devices. Among examples of the needs for improved services are those related to prosthetic feet, above-knee sockets, and orthotic devices. While there is now a plethora of "energy-storing" feet on the market, there is no scientific base to evaluate these feet in normal walking. Similarly, there has been a substantial change of practice in the prescription of above-knee sockets from the quadrilateral sockets used for more than 40 years to the so-called "ischial containment" sockets. This change appears to be almost entirely arbitrary, since there is no documentation as to which types of sockets are most beneficial to the recipients. The area of orthotics, perhaps even more than limb prosthetics, lacks a scientific and engineering base to support improvements in devices for individuals. The wide diversity of orthotic fittings for many different muscular, neuromuscular, and skeletal problems, including the introduction of so-called "tone-reducing" orthoses, adds to the complexity of this field and supports the need for further research.

Priority

The REC in prosthetics and orthotics shall conduct research and development activities that will result in—

- Increased understanding of human locomotion, primarily walking, and of the role of physiological and prosthetic limbs and joints in ambulation;

- Improved prescriptions and fitting techniques for prosthetic devices;
- Improved interface devices and other components and methods to evaluate those devices;
- Devices using stronger and lighter new materials—derived largely from "space-age technology"—and documentation of the efficacy of those devices;
- Applications of techniques of CAD/CAM and CAE to improve the accuracy, speed, and efficiency of the design, manufacturing, and fitting of prostheses and orthoses; and
- Increased capacity on the part of prosthetists, orthotists, related health care providers, rehabilitation counselors, manufacturers, and individuals with disabilities to use better prescriptive and diagnostic techniques and to select and use the most appropriate prosthetic and orthotic devices to enhance human functioning.

Proposed Priority 8—Robotics to Enhance the Functioning of Individuals With Disabilities

Background

At present, at least eight million Americans require assistance to perform routine daily activities such as eating, bathing, preparing meals, and other tasks of self-care and home-care (La Plante, 1986). Much of this assistance is provided by so-called personal attendants, who may be family members or friends or persons employed for that purpose.

Personal assistance is often necessary and may create positive interpersonal relationships. However, it has several deficits as a means to facilitate independence. It requires dependence on another person; it is costly and often difficult to arrange; and it does not necessarily contribute to the development of increased functional capacity for the individual with a disability.

In many instances, robotics and other state-of-the-art technologies can supplant the need for assistance from another person, thus enhancing the capacity of the individual with a disability to function independently at home and in society and the workplace. The benefits of using robotic devices could be particularly significant for individuals who have high-level quadriplegia and individuals who are missing limbs.

In the past three decades there has been considerable productive research in the fields of robotics and remote manipulation in industrial and defense applications. Robots are now available

to distribute mail, supplies, and food in industries and institutions and to assemble a variety of products from automobiles to computers. While this technology is potentially applicable to individuals with disabilities, reliable and cost-effective robots and robotic systems are not generally available for this purpose.

The technology of robotic systems is similar to that used in remote manipulators and externally powered prostheses and orthoses. While there has been ongoing research to develop this technology for upper extremities amputees, there has been no substantial development of powered orthoses and robotics suitable for persons with paralyzed upper extremities. For a new assistive device to contribute to increased human functioning and independence, it must provide a real and significant increase in function so that it will be used voluntarily by the person with disability for the purposes intended. This requires consumer involvement in developing and testing the devices. In order to merit purchase by third-party payers, the assistive device also must be demonstrably safe, cost-effective, maintainable, and widely available (Preisling, B., Hsia, T.C., and Mittelstadt, B., 1991; Foulds, R., ed., 1990).

Priority

The REC in robotics to enhance the functioning of individuals with disabilities shall develop and evaluate—

- Safe, reliable, and cost-effective robotic systems that will enable a paralyzed person to be more independent;
- Safe, reliable, and cost-effective powered controls for upper extremity prostheses and orthoses that will provide individuals with upper extremities paralysis with the capability to perform many additional functions independently; and
- Prototype systems to be evaluated for technology transfer and commercialization.

Proposed Priority 9—Quantification of Physical Performance

Background

Human physical function is characterized mainly by purposeful movement of the extremities as in walking and arm activities, with other body muscles usually involved to provide stability, support, and reaction forces. Lifting and carrying objects involves many body muscles, as do most sport and exercise activities.

The measurement and quantification of muscle action and resulting forces

and movements plays a vital role in rehabilitative diagnosis, therapy, and evaluation of progress and outcomes. Quantification of function is necessary to determine eligibility for income support and the need for specific worksite accommodations.

Measurements of physical function are of three general types. First are the static and dynamic measurements of location and movement of points on the body—including position, velocity, time, acceleration (kinesiology), force, and pressure (dynamic)—that can be related to a defined body action. Second are the concomitant electrical and chemical measurements associated with muscle and nerve activity related to a defined body action. Third are the work related energy measurements of capacity and efficiency in functional activity (Powell, D. and Mann, R.W., 1989).

Much progress has been made in applying sophisticated technology to measurement and recording of movement variables and neuromusculature or electrochemical variables. For example: (1) there are many gait laboratories where the three-dimensional kinesiology variables associated with walking are recorded using camera arrays while electrical activity of muscles is telemetered to central computers, and energy consumption is measured through chemical analysis of expired gasses; (2) computer programs have been developed to quantify muscle coordination and cognitive reaction times in stroke, head injury, and mental dysfunction; and (3) new measurement devices have been designed to quantify the functional ability of a worker to undertake a specific type of job or, alternatively, to provide guidance in modifying a job location to permit access and operation.

The rehabilitation field has a very sophisticated ability to measure and record variables associated with human function, but there has been no corresponding progress in interpretation of those data and the use of interpretations to influence rehabilitation outcomes. There is a need for research to refine measurements, to define relatively simple values based on measurements that can be understood and used by physicians and allied health persons to optimize treatment and outcomes, and to share this information widely.

There is an associated need for researchers and practitioners in the field to agree on and accept an increasing number of measures and values that have demonstrated usefulness and reliability in the treatment and assessment of specific disabilities.

There is a need to quantify functional limitation resulting from work-related injury to better correlate compensation with the true degree of limitation.

Priority

The REC in quantification of physical performance shall conduct research and development to—

- Improve instrumentation used for the quantification of function such as balance, walking, upper extremity coordination, range of motion, strength, and other performance indicators for individuals with functional loss due to various conditions—including low back injury, developmental disability, trauma, disease, aging, congenital deformity, and others; and
- Validate the new instruments for applicability to needs of diagnosticians, service providers, and third-party payers in authorizing treatment, device procurement, and reimbursement.

In addition, the REC shall (1) provide technical assistance to those Rehabilitation Research and Training Centers and RECs that employ quantitative measures of physical function in their activities, and (2) disseminate outcomes of research and development widely, especially to practitioners and providers.

Proposed Priority 10—Technology Evaluation and Transfer

Background

In 1982, the Office of Technology Assessment (OTA) of the United States Congress stated that "a coherent, adequately funded, and well-focused program of evaluation is necessary at all levels of technology diffusion and adoption. Such a program does not currently exist in the disability-related technology sector" (OTA, Technology and Handicapped People, 1982). Today, 10 years later, the same statement can be made with equal accuracy and relevance.

Technical devices that enhance the physical and sensory functions of persons with disabilities are, with rare exception, "orphan" products developed by individual entrepreneurs and small companies with little or no capital or capacity for evaluation. Investors of venture capital require market surveys that are often beyond the capabilities of these inventors, especially as the potential market is limited and difficult to define. As a result, many inventors and product designers cannot move their technology into production.

Evaluation is critical to the diffusion of technology in two important ways: First, the purchase of a limited number

of prototypes for evaluation can provide for an entrepreneur a much needed portion of the "start-up" capital for initial tooling and production design. Second, evaluation will answer questions of safety, utility, cost-effectiveness and conditions under which the new product may be expected to perform better than any existing one. This is critical information without which no manufacturer will commit substantial funding.

There are three major components of assistive technology evaluation:

Internal Evaluation, which is part of the iterative process of design and development in which early trials illuminate design faults and lead to a continuing process of redesign and retesting. These indispensable trials are centered and directed in the developer's facility, with access to a clinical or home site. Internal evaluations usually involve only a few subjects in order to get immediate feedback. They do not constitute truly objective user trials.

Technical Evaluation, which requires scientific testing or expert analysis of the mechanical, electrical, and material factors that relate to technical performance, safety, and failure modes of a device. This evaluation is done in a testing facility with appropriate equipment and trained personnel.

User Trials, which are conducted independently in a clinical setting or in the community, require the design and administration of objective protocols, and must involve enough devices and subjects to be statistically meaningful.

To justify further investment, a device must meet the needs of enough persons to permit quantity production and distribution. A device must be compatible with an individual's lifestyle and be more cost-effective than any other solution if it is to be accepted and authorized for third-party payment. And, above all, the device must be safe and reliable. Evaluation is the only way to

obtain a meaningful measure of the likelihood of success of a new device.

NIDRR has a statutory mandate to "improve the distribution of technological devices and equipment for individuals with handicaps by providing financial support for the development and distribution of such devices and equipment" (sec. 203 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760(3)). Evaluation of any device in a study that meets rigorous criteria is expensive and time consuming. But effective evaluation is the only way to determine the reality of market prognosis—the truth of a new device's potential to benefit enough persons with disabilities at a cost that is commensurate to the benefit.

Priority

The REC in technology evaluation and transfer shall have as its primary goal to facilitate the transfer of promising technology arising from individual entrepreneurs and small businesses into manufacture and distribution. To carry out this goal, the REC shall—

- Initiate, conduct, or coordinate the evaluation of selected promising devices and promulgate resulting information to consumers, providers, and others who could benefit from this information.
- Solicit and screen promising technology to determine those devices that are most likely to succeed, that are intended to meet a high priority need, and for which the capability for manufacture and distribution exists;
- Develop an equitable system to select products for evaluation and transfer so that those products with the greatest potential for practical benefit will be evaluated first;
- Design and manage evaluation protocols for technical evaluations and user trials;
- Reimburse developers for all or part of the cost to produce a sufficient number of pre-production prototype devices for evaluation;

- Arrange, coordinate, and financially support all or part of the cost of a comprehensive technical evaluation and user trials of the selected devices;

- Develop a viable policy whereby a prototype device under evaluation may, if appropriate, become the property of the user involved in the evaluation;

- Document the process used by the REC and disseminate the model process and related policies and documents to appropriate entities that may be interested in replication;

- Develop and implement a dissemination process that makes the results of all evaluations available to individuals with disabilities and to the practitioners and providers that serve them; and

- Develop a process whereby commercially successful ventures contribute some funding to enable the center to become self-sustaining at the end of the grant period.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3415, Mary Switzer Building, 330 C Street SW., Washington, DC, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 353.

Program Authority: 29 U.S.C. 760-762. (Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Centers)

Dated: May 7, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-18348 Filed 8-3-92; 8:45 am]

BILLING CODE 4000-01-M

Testis Great Paper Federal Paper

Tuesday
August 4, 1992

Part VIII

Department of Education

34 CFR Part 555

**Bilingual Education; Evaluation Assistance
Centers Program; Proposed Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 555

RIN 1885-AA19

Bilingual Education; Evaluation Assistance Centers Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to issue regulations implementing section 7034 of the Bilingual Education Act—the Evaluation Assistance Centers Program. The proposed regulations would provide for the establishment of at least two Evaluation Assistance Centers (EACs) through competitive grants.

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to James H. Lockhart, U.S. Department of Education, 400 Maryland Avenue, SW., room 5625, Switzer Building, Washington, DC 20202-6641.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: James H. Lockhart. Telephone: (202) 205-5426. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement section 7034 of the Bilingual Education Act, title VII of the Elementary and Secondary Education Act of 1965 (the Act).

Prior to fiscal year (FY) 1991, the Secretary awarded funds to EACs through competitive contracts. When the contracts for the previous EACs expired at the end of FY 1991, the Secretary changed the funding mechanism to competitive grants, as allowed by the Act. For the first competition, in the absence of implementing regulations, and in order to ensure timely awards, the Secretary evaluated applications for these grants on the basis of the selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210. These proposed regulations have been written specifically for the Evaluation Assistance Centers Program.

The proposed regulations would require EACs to provide technical assistance to (1) local educational

agencies (LEAs) in conducting evaluations and using them to improve instructional services for limited English proficient (LEP) students; and (2) State educational agencies (SEAs) in developing and administering instruments and procedures to assess the educational needs and competencies of LEP persons.

The Evaluation Assistance Centers Program supports AMERICA 2000, the President's education strategy for helping the Nation move itself toward the National Education Goals, by helping LEAs and SEAs identify the educational needs and competencies of LEP persons and improve instructional services for those students. National Education Goal 3 specifically calls for all students to demonstrate competency in challenging subject matters. The Evaluation Assistance Centers Program is also an important part of the Department's efforts to evaluate the effectiveness of programs assisted under the Act.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are institutions of higher education (IHEs) receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the IHEs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 555.21, 555.31, 555.41, and 555.42 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

IHEs are eligible to apply for grants under this program. The Department needs and uses the information collected in the application to make grants. The annual public reporting and recordkeeping burden for this collection

of information is estimated to average 81.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The burden per respondent is estimated to range between 30 and 120 hours. This variance depends on the nature of the grant application, with new applications requiring extensive narratives addressing the selection criteria, and continuation applications requiring brief narratives describing progress toward objectives. Approximately 10 respondents are expected to submit new applications once every three years. Two respondents are expected to submit annual continuation applications in the intervening years.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 5629, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that

is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 555

Bilingual education, Elementary and secondary education, Grant programs—education, Postsecondary education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: 84.003H Bilingual Education: Evaluation Assistance Centers Program)

Dated: July 28, 1992.

Lamar Alexander,
Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 555 to read as follows:

PART 555—EVALUATION ASSISTANCE CENTERS PROGRAM

Subpart A—General

Sec

- 555.1 What is the Evaluation Assistance Centers Program?
- 555.2 Who is eligible for an award?
- 555.3 What geographic regions do the EACs serve?
- 555.4 What regulations apply?
- 555.5 What definitions apply?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

- 555.10 What kinds of activities do the EACs carry out in assisting local educational agencies?
- 555.11 What kinds of activities do the EACs carry out in assisting State educational agencies?

Subpart C—How Does One Apply for an Award?

- 555.20 What requirements pertain to establishing an EAC advisory board?
- 555.21 What assurances must an applicant make?

Subpart D—How Does the Secretary Make an Award?

- 555.30 How does the Secretary evaluate an application?
- 555.31 What selection criteria does the Secretary use?
- 555.32 What is the length of the project period?
- 555.33 What requirements pertain to all grantees?

Subpart E—What Conditions Must Be Met After an Award?

- 555.40 Must the EAC have a director?
- 555.41 What reports must the EAC submit to the Secretary?
- 555.42 What conditions must an EAC meet in coordinating services throughout its region?

Authority: 20 U.S.C. 3304, unless otherwise noted.

Subpart A—General

§ 555.1 What is the Evaluation Assistance Centers Program?

This program provides Federal financial assistance to establish and operate at least two regional Evaluation Assistance Centers (EACs). These centers provide, upon the request of State or local educational agencies, technical assistance regarding methods and techniques for identifying the educational needs and competencies of limited English proficient (LEP) persons and assessing the educational progress achieved through programs such as those assisted under the Bilingual Education Act of 1988. The EACs' activities are an important part of the Department's efforts to evaluate the operation and effectiveness of programs assisted under the Act.

(Authority: 20 U.S.C. 3301, 3304)

§ 555.2 Who is eligible for an award?

An institution of higher education (IHE), including a junior or community college, is eligible for an award under this program.

(Authority: 20 U.S.C. 3304)

§ 555.3 What geographic regions do the EACs serve?

The Secretary announces, in a notice published in the *Federal Register*, the geographic service area of each EAC.

(Authority: 20 U.S.C. 3304)

§ 555.4 What regulations apply?

The following regulations apply to the Evaluation Assistance Centers Program:

- (a) The Education Department General Administrative Regulations (EDGAR) as follows:
 - (1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).
 - (2) 34 CFR part 75 (Direct Grant Programs).
 - (3) 34 CFR part 77 (Definitions that Apply to Department Regulations).
 - (4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
 - (5) 34 CFR part 81 (General Education Provisions Act—Enforcement).
 - (6) 34 CFR part 82 (New Restrictions on Lobbying).
 - (7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
 - (8) 34 CFR part 86 (Drug-Free Schools and Campuses).
- (b) The regulations in this part 555.

(Authority: 20 U.S.C. 3304)

§ 555.5 What definitions apply?

(a) The definitions in 34 CFR 500.4 apply to the Evaluation Assistance Centers Program.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Budget
Grant
Project period

(c) *Other definitions.* The following definition also applies to this part:

Evaluation Assistance Center means an administrative unit of an institution of higher education that engages in the activities specified in 34 CFR 555.10–555.12.

(Authority: 20 U.S.C. 3281, 3283, 3304)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 555.10 What kinds of activities do the EACs carry out in assisting local educational agencies?

The EACs shall assist local educational agencies (LEAs) to—

- (a) Comply with the evaluation requirements in 34 CFR 500.50–500.52;
- (b) Ensure that program evaluations are used effectively to improve instructional services for LEP persons;
- (c) Ensure that parents and practitioners, such as directors, teachers, principals, paraprofessionals, and teacher aides, become directly involved with evaluators in the program evaluation process; and
- (d) Ensure that evaluation reports are written in clear, non-technical language and provide superintendents and board members with useful information and data for improving instructional services for LEP persons in their districts.

(Authority: 20 U.S.C. 3303, 3304)

§ 555.11 What kinds of activities do the EACs carry out in assisting State educational agencies?

The EACs shall assist State educational agencies (SEAs) to—

- (a) Review and evaluate programs of bilingual education, including bilingual education programs that are not funded under the Act, as specified in 34 CFR 548.11(a)(2); and
- (b) Develop and administer instruments and procedures for the assessment of the educational needs and competencies of LEP persons, as specified in 34 CFR 548.11(a)(4).

(Authority: 20 U.S.C. 3304)

Subpart C—How Does One Apply for an Award?

§ 555.20 What requirements pertain to establishing an EAC advisory board?

(a) An applicant shall establish an advisory board, composed of no fewer than five members, to assist in the development of the application and provide continuing guidance during the project period.

(b) The board membership must include representatives of the SEAs, LEAs, and IHEs within the geographic service area of the applicant. At least two-thirds of the board membership must be representatives of SEAs and LEAs.

(Authority: 20 U.S.C. 3304)

§ 555.21 What assurances must an applicant make?

In its application for an award for an EAC, an applicant shall include assurances that it will—

(a) Provide to the Secretary monthly schedules of workshops and activities and disseminate the schedules;

(b) Ensure that technical assistance materials developed as a result of grant activities are appropriately disseminated;

(c) Administer and maintain control of funds provided under this program; and

(d) Supervise the employment of personnel specified in § 555.31(b) and not commingle funds provided for this employment with State or local funds.

(Authority: 20 U.S.C. 3304)

Subpart D—How Does the Secretary Make an Award?

§ 555.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 555.31.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points.

(c) Subject to the distribution of the reserved points, the maximum possible score for each complete criterion is indicated in parentheses.

(d) The Secretary distributes an additional 15 points among these criteria. For each competition, as announced through a notice in the *Federal Register*, the Secretary indicates how these 15 points are distributed.

(Authority: 20 U.S.C. 3304)

§ 555.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Understanding of regional needs.* (5 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has assessed the needs of its region; and

(2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(b) *Quality of key personnel.* (25 points) The Secretary reviews each application to determine—

(1) The extent to which the staffing plan for the EAC provides evidence that the project director and other key personnel (including a principal investigator, if applicable) have appropriate graduate training and experience in the areas of evaluation and assessment required to conduct the proposed activities, such as—

(i) Methodology in bilingual education, such as found in—

(A) Programs of transitional bilingual education authorized under section 7021(a)(1) of the Act;

(B) Programs of developmental bilingual education authorized under section 7021(a)(2) of the Act; and

(C) Special alternative instructional programs authorized under section 7021(a)(3) of the Act;

(ii) Educational practices at various levels from preschool to graduate school;

(iii) Technology-based instruction; and

(iv) Experience with educational entities, such as LEAs, SEAs, and IHEs;

(2) The extent to which each person referred to in paragraph (b)(1) of this section has other training and experience related to the objectives of the project;

(3) The time that each person referred to in paragraph (b)(1) of this section will commit to the project;

(4) Any other bilingual education skills, if appropriate, that the persons referred to in paragraph (b)(1) of this section may bring to the project; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(c) *Coordination with other evaluation activities.* (5 points) The Secretary reviews each application to determine—

(1) The degree to which the applicant has coordinated with State and regional organizations administering evaluation programs in developing the application;

(2) The adequacy of the applicant's plans for coordination with State, regional, and national evaluation activities; and

(3) The adequacy of the applicant's plans to coordinate with other EACs funded under this part to achieve an equitable distribution of assistance.

(d) *Center advisory board.* (5 points) The Secretary reviews each application to determine—

(1) The extent to which representatives of the geographic service area of the EAC and representatives of the SEAs, LEAs, and IHEs within the service area have agreed to serve in an advisory capacity;

(2) The professional evaluation background of the representatives selected for board membership; and

(3) The adequacy of the applicant's plans to involve the advisory board in the activities of the proposed EAC.

(e) *Quality of the organization and management.* (15 points) The Secretary reviews each application to determine the quality of the organization and management capabilities for operating the EAC, including—

(1) The past performance and accomplishments of the applicant, indicating the ability to complete successfully the proposed project plan;

(2) The manner in which the applicant contributes IHE personnel resources, such as professional and non-professional staff, to achieve its objectives;

(3) The manner in which the applicant proposes to utilize its resources, such as libraries and other centers, to achieve its objectives;

(4) The extent to which the facilities, equipment, and other resources to be used are adequate and are accessible to persons with disabilities; and

(5) Proposed use of technology in the EAC and coordination between the EAC and other units of the IHE that will maximize services to clients.

(f) *Plan of Operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the EAC, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable; and

(iv) Include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;
(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable.

(h) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 3304)

§ 555.32 What is the length of the project period?

The Secretary approves a project period of three years.

(Authority: 20 U.S.C. 3304)

§ 555.33 What requirements pertain to all grantees?

A grantee shall assure the Secretary that it will—

(a) Work closely with its EAC advisory board in carrying out project activities;

(b) Coordinate project activities with other Federal programs that are related to the purposes of the Evaluation Assistance Centers Program; and

(c) Assist grantees funded under Part A of the Act in the implementation of the evaluation requirements specified in 34 CFR 500.50–500.52.

(Authority: 20 U.S.C. 3303–3304)

Subpart E—What Conditions Must Be Met After an Award?

§ 555.40 Must the EAC have a director?

An EAC must have a full-time director.

(Authority: 20 U.S.C. 3304)

§ 555.41 What reports must the EAC submit to the Secretary?

(a) An EAC must submit to the Secretary the following reports:

(1) The monthly schedules specified in § 555.21(a).

(2) An annual evaluation report.

(b) The EAC may submit the reports and schedules specified in paragraph (a) of this section in hard copy or diskette form.

(Authority: 20 U.S.C. 3304)

§ 555.42 What conditions must an EAC meet in coordinating services throughout its region?

In carrying out its general responsibilities under the Act, each EAC must—

(a) Inform SEAs, LEAs and IHEs about the range of services offered by the EAC;

(b) Establish an EAC advisory board, as specified in § 555.20;

(c) Achieve an equitable distribution of assistance throughout its service area;

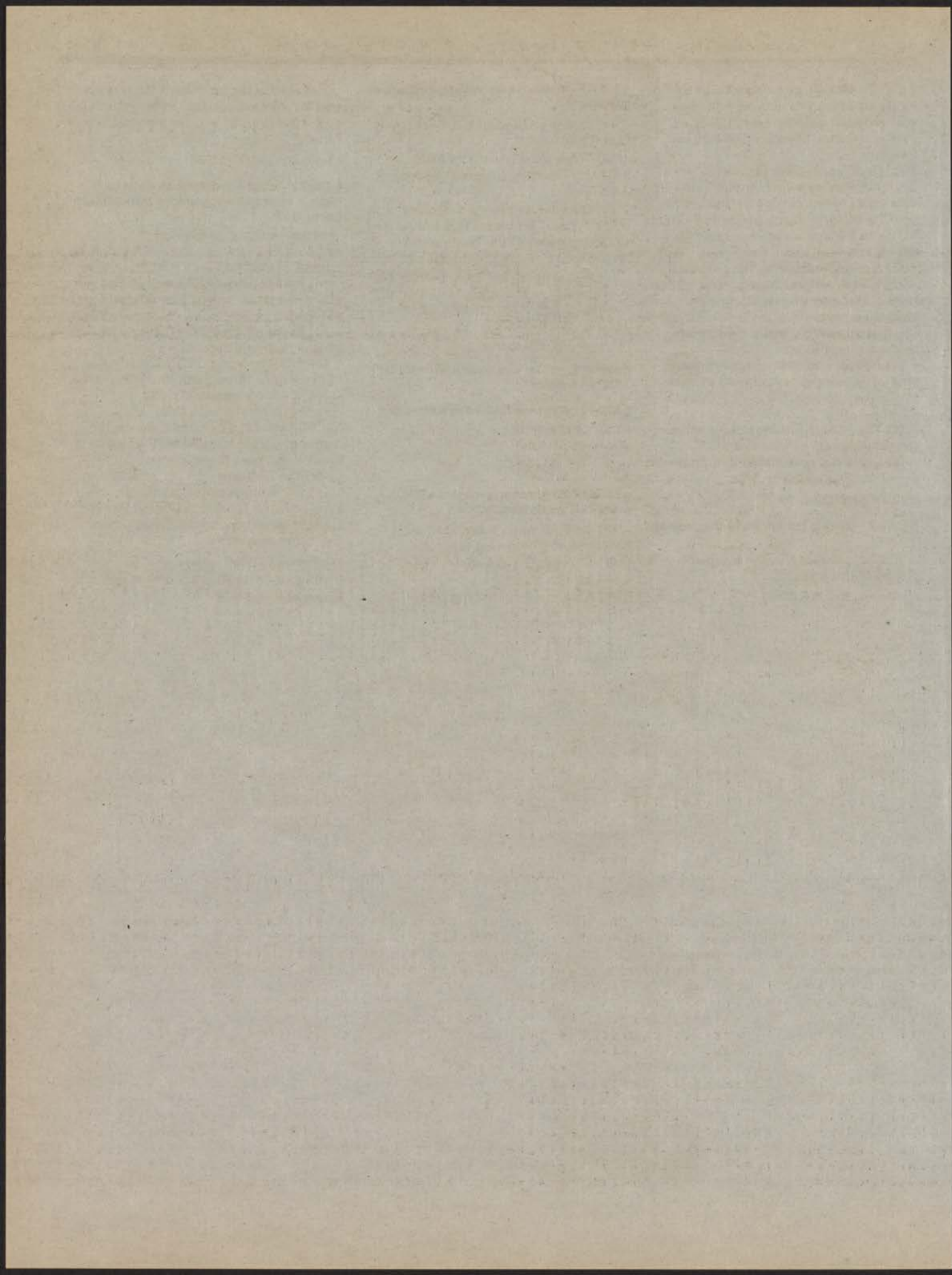
(d) Work cooperatively and coordinate efforts with the Multifunctional Resource Centers, the National Clearinghouse for Bilingual Education, and other programs funded under the Act; and

(e) Work cooperatively with the other EAC or EACs funded under the Act by sharing materials, books, information, and other resources.

(Authority: 20 U.S.C. 3304)

[FR Doc. 92-18351 Filed 8-3-92; 8:45 am]

BILLING CODE 4000-01-M



Registered Trademark

**Tuesday
August 4, 1992**

Part IX

Federal Reserve System

**Applications, Hearings, Determinations,
etc.: Wabasha Holding Co. and Meridian
Bancorp, Inc., et al.; Notices**

FEDERAL RESERVE SYSTEM**Wabasha Holding Company;
Acquisition of Company Engaged in
Permissible Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Wabasha Holding Company*, Wabasha, Minnesota; to acquire First State Insurance of Wabasha, Inc., Wabasha, Minnesota, and thereby engage in insurance agency activities, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18381 Filed 8-3-92; 8:45 am]

BILLING CODE 6210-01-F

**Meridian Bancorp, Inc., et al.;
Formations of; Acquisitions by; and
Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 26, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp, Inc.*, Reading, Pennsylvania; to merge with Peoples Bancorp, Inc., Lebanon, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *United Bankshares, Inc.*, Charleston, West Virginia; to merge with Liberty Bancshares, Inc., Montgomery, West Virginia, and thereby indirectly acquire The Montgomery National Bank, Montgomery, West Virginia.

2. *United Bankshares, Inc.*, Charleston, West Virginia; to merge with Summit Holding Corporation, Beckley, West Virginia, and thereby indirectly acquire Raleigh County National Bank, Beckley, West Virginia.

Board of Governors of the Federal Reserve System, July 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18382 Filed 8-3-92; 8:45 am]

BILLING CODE 6210-01-F

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Vol. 57, No. 150

Tuesday, August 4, 1992

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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